

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 INTERIM AND FINAL ORDERS PURSUANT TO SECTIONS 105(a), 362(d), 363(b), AND 503(b) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 4001, 6003, AND 6004 AUTHORIZING DEBTORS TO (I) CONTINUE THEIR WORKERS’ COMPENSATION PROGRAM AND GENERAL INSURANCE PROGRAMS, (II) PAY ALL PREPETITION INSURANCE OBLIGATIONS IN RESPECT THEREOF, AND (III) DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH INSURANCE 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**”),<sup>1</sup> file this motion (the “**Motion**”) for entry of interim and final orders authorizing the Debtors to (i) continue their workers’ compensation and general insurance programs, (ii) pay all obligations in respect thereof, and (iii) direct banks and financial institutions to honor and process checks and transfers relating thereto and 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

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

**“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 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. By this Motion, the Debtors request entry of an interim order (substantially in the form of **Exhibit C** attached hereto) and a final order (substantially in the form of **Exhibit D** attached hereto) authorizing the Debtors, in their sole discretion and pursuant to sections 105(a), 362(d), 363(b), and 503(b) of the Bankruptcy Code and Bankruptcy Rules 4001, 6003, and 6004, to continue the EES Insurance Programs (as defined below) uninterrupted and to pay prepetition obligations arising under or relating to the EES Insurance Programs, including the payment of all claims, administrative expenses, brokers’ fees, charges,

premiums, true-ups, premium finance payments, self insured liability, and deductibles related to prepetition insurance policies (collectively, the “**Insurance Obligations**”).

5. **Interim Relief:** The Debtors request interim authorization to pay the Insurance Obligations that become due and owing within the first thirty days of these chapter 11 cases, which the Debtors estimate to be approximately \$366,000.

6. **Final Relief:** In addition to the relief sought on an interim basis, subject to a final hearing, the Debtors request final authorization to pay all remaining prepetition Insurance Obligations.

7. The Debtors further request that the Court authorize and direct the Debtors’ banks and financial institutions (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’ general disbursement accounts to the extent that such checks or electronic fund transfers relate to the Insurance Obligations.

#### IV.

#### **THE EES INSURANCE PROGRAMS AND RELATED OBLIGATIONS**

8. In connection with the operation of their business, the Debtors, through several different insurance carriers, maintain (i) general insurance programs and related policies (collectively, the “**General Insurance Programs**”); and (ii) a workers’ compensation program and related policies (the “**Workers’ Compensation Program**,” and together with the General Insurance Programs, the “**EES Insurance Programs**”).<sup>2</sup> Moreover, to facilitate procurement and maintenance of the forgoing, the Debtors utilize the services of an insurance broker.

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<sup>2</sup> A non-exhaustive list of the policies comprising the EES Insurance Programs is attached hereto as **Exhibit B**.

**A. General Insurance Programs**

**1. Description of the General Insurance Programs**

9. The Debtors' General Insurance Programs provide coverage for, among other things, real property, personal property, general liability, automobile liability, environmental liability, fiduciary liability, errors and omissions, directors and officers, umbrella/excess liability, and employment practices liability. The Debtors maintain the General Insurance Programs in amounts and types of coverage in accordance with the state and local laws governing the multiple jurisdictions in which the Debtors conduct business, as well as in accordance with their numerous contractual obligations. The aggregate annual premiums for all of the General Insurance Programs (the "**General Insurance Premiums**") total approximately \$2.87 million. The Debtors also have various deductible and co-insurance obligations which are paid based on the amount of claims made against the General Insurance Programs, and which are calculated in accordance with the applicable insurance policies.

10. The Debtors' general liability, auto liability, and umbrella liability insurance policies are issued by affiliates of AIG Insurance Company ("**AIG**"). AIG performs a true-up at the end of a policy period in order to determine whether the Debtors owe additional premiums or are entitled to a refund on any of their premiums. To secure the Debtors' payment obligations to AIG, including, but not limited to deductible payments, the Debtors have posted (i) a letter of credit to AIG in the approximate amount of \$2.5 million; (ii) an additional letter of credit in the approximate amount of \$965,000; and (iii) a cash deposit in an AIG bank account in the approximate amount of \$35,000 (collectively, the "**AIG Collateral**").<sup>3</sup>

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<sup>3</sup> The AIG Collateral also secures payment obligations relating to the Debtors' workers compensation policies, which are similarly issued by an affiliate of AIG.

11. Prior to the Commencement Date, the Debtors entered into three premium finance arrangements that, except for directors and officers liability, employment practices liability, and fiduciary liability, satisfied all premiums due for the EES insurance policies pertaining to the General Insurance Programs. In April 2009, the Debtors entered into a premium finance arrangement (the “**First Finance Arrangement**”) with AFCO Premium Credit, LLC (“**AFCO**”) to satisfy the premiums for the general liability, umbrella liability, contractors’ equipment liability, and auto liability policies.<sup>4</sup> Pursuant to the terms of the First Finance Arrangement, the Debtors pay monthly installments (the “**Finance Payments**”) totaling approximately \$352,000. The Debtors have five (5) remaining monthly Finance Payments under the First Finance Arrangement, which are pre-paid at the beginning of each month and total approximately \$1.76 million in the aggregate (which includes amounts relating to the Debtors’ workers’ compensation policies). In addition, to satisfy their property insurance premiums, on June 10, 2009, the Debtors entered into a second premium finance arrangement with AFCO (the “**Second Finance Arrangement**”). Pursuant to the terms of the Second Finance Arrangement, the Debtors pay monthly Finance Payments totaling approximately \$1,460. The Debtors have five (5) remaining monthly Finance Payments under the Second Finance Arrangement, which are pre-paid at the beginning of each month and total approximately \$7,300 in the aggregate. To satisfy their additional equipment insurance premiums, on September 29, 2009, the Debtors entered into a third premium finance arrangement with AFCO (the “**Third Finance Arrangement**,” and together with the First Finance Arrangement and the Second Finance Arrangement, the “**Finance Arrangements**”). Pursuant to the terms of the Third Finance Arrangement, the Debtors pay monthly Finance

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<sup>4</sup> The First Finance Arrangement also satisfied the premiums for the Debtors’ workers’ compensation program described in this Motion.

Payments totaling approximately \$11,620. The Debtors have five (5) remaining monthly Finance Payments under the Third Finance Arrangement, which are pre-paid at the beginning of each month and total approximately \$58,100 in the aggregate. The Debtors' payment obligations under each of the Finance Arrangements are secured by all unearned premiums or dividends payable to the Debtors under the insurance policies covered by the applicable Finance Arrangement. Finally, on July 11, 2009, the Debtors renewed their policies covering directors and officers liability, employment practices liability, and fiduciary liability and have satisfied all premium payments relating thereto.

**2. Relief Requested Regarding the General Insurance Programs**

12. The insurance coverage provided under the General Insurance Programs is essential for preserving the Debtors' business and, in many cases, such coverage is required by various regulations, laws, and contracts that govern the Debtors' business. Disruption of the General Insurance Programs would expose the Debtors to serious risks, including: (i) the possible incurrence of direct liability for the payment of claims and other material costs and losses that otherwise would have been payable by the insurance carriers under the General Insurance Programs; (ii) the possible loss of good-standing certification to conduct business in states that require the Debtors to maintain certain levels of insurance coverage; (iii) a violation of the express terms of every master service contract with the Debtors' customers and certain leases, including automobile and equipment leases, which require the Debtors to maintain specified insurance coverage; and (iv) the possible inability to obtain similar types of insurance coverage. Any or all of these consequences would be seriously harmful to the Debtors' business and restructuring efforts.

13. Accordingly, the Debtors request interim authority, in their discretion, to make required postpetition Finance Payments that become due with respect to the General Insurance Programs between the Commencement Date and the entry of a final order. The Debtors also request final authorization, but not the direction, to pay all prepetition Insurance Obligations arising under the General Insurance Programs, including, but not limited to, deductible payments relating to prepetition claims and the remaining Finance Payments under the Finance Arrangements.

**B. Workers' Compensation Program**

**1. Description of the Workers' Compensation Program**

14. Under the laws of the various states in which they operate, the Debtors are required to maintain a workers' compensation policy to provide their employees with compensation for injuries arising from or related to their employment with the Debtors. The Debtors maintain two workers' compensation policies (the "**C&I Policies**") with Commerce & Industry Insurance Company ("**C&I**"), an affiliate of AIG; consisting of one policy covering those employees working in the state of Texas and a second policy covering those employees working in all other states where the Debtors provide services.<sup>5</sup> As of the Commencement Date, the Debtors estimate that there are approximately 67 open workers' compensation claims under their Workers' Compensation Program.

15. The premiums due under the C&I Policies, approximately \$2.6 million, were paid in full prior to the Commencement Date through the First Finance Arrangement.

AIG/C&I performs a true-up based on actual payroll at the end of a policy period in order to

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<sup>5</sup> Prior to April 2009, the Debtors maintained workers' compensation policies with Zurich Insurance Company ("**Zurich**"). Although the Debtors no longer maintain these policies, there are still open claims and payments to be made with respect to these policies. In April 2009, the Debtors deposited \$1 million cash in a Zurich account to satisfy any payment obligations arising under these policies.

determine whether the Debtors owe additional premiums or are entitled to a refund on any of their pre-paid premiums.

16. Under the C&I Policies, the Debtors are responsible for paying a deductible of \$250,000 per claim asserted (the “**C&I Deductible**”). C&I is obligated to pay the balance of a claim amount above the C&I Deductible, up to the statutory limit set by each state. The AIG Collateral secures the Debtors’ payment obligations arising under or relating to the C&I Policies.

**2. Relief Requested Regarding the Workers’ Compensation Program**

17. The Workers’ Compensation Program is essential to the continued operation of the Debtors’ business under the laws of the various states in which they operate. The Debtors request final authorization, but not the direction, to pay any C&I Deductible payments that become due with respect to the Workers’ Compensation Program. Furthermore, as described in detail below, the Debtors request that, pursuant to a final order, the Court lift the automatic stay to permit employees with claims under the Workers’ Compensation Program to proceed with their claims in the appropriate judicial or administrative forum.

**C. Insurance Broker**

18. In connection with the EES Insurance Programs, the Debtors employ Marsh USA, Inc. (“**Marsh**”) to assist them with the procurement and negotiation of various insurance policies and premium finance arrangements. Marsh provides services, and receives compensation, pursuant to broker agreements with the Debtors (the “**Broker Fees**”). The Debtors have no outstanding prepetition Broker Fees owing to Marsh. The Debtors seek the entry of a final order authorizing the Debtors to maintain their agreements with Marsh and satisfy any Broker Fees in the ordinary course of business.

V.

**BASIS FOR RELIEF REQUESTED**

**A. The Court May Authorize the Debtors to Continue the EES Insurance Programs and Pay All Insurance Obligations Relating Thereto**

19. Pursuant to section 503(b)(1) of the Bankruptcy Code, a debtor may incur, and the court, after notice and a hearing, shall allow as administrative expenses, among other things, “the actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b)(1). In addition, pursuant to section 363(b) of the Bankruptcy Code, a debtor may, in the exercise of its sound business judgment and after notice and a hearing, use property of the estate outside of the ordinary course of business. Id. § 363(b). The Debtors submit that the use of the estates’ funds for payment of the Insurance Obligations is permitted by sections 503(b)(1) and 363(b).

20. Furthermore, to supplement these explicit powers, section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Id. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” See, e.g., In re CoServ, L.L.C., 273 B.R. 487, 490 (Bankr. N.D. Tex. 2002) (holding that a court may authorize payment of prepetition claims if, among other things, dealing with the claimant is virtually indispensable to the preservation of the estate); see also In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to continued operation of the debtor).

**B. Continuing the EES Insurance Programs and Paying All Insurance Obligations in Respect Thereof Is Necessary to Preserve the Value of the Debtors' Estates**

21. The Debtors have compelling business reasons for seeking to maintain the EES Insurance Programs. The insurance coverage provided under the EES Insurance Programs is essential for preserving the Debtors' business, property, and assets, and, in many cases, such coverage is required by various regulations, laws, and contracts that govern the Debtors' business. Disruption of the EES Insurance Programs would expose the Debtors to serious risks, including: (i) the possible incurrence of direct liability for the payment of claims and other material costs and losses that otherwise would have been payable by the insurance carriers under the EES Insurance Programs; (ii) the possible loss of good-standing certification to conduct business in states that require the Debtors to maintain certain levels of insurance coverage; (iii) the possible inability to obtain similar types of insurance coverage; (iv) the forfeiture of certain letters of credit; (v) the possible incurrence of higher costs for re-establishing lapsed policies or obtaining new insurance coverage; and (vi) a violation of the express terms of every master service contract with the Debtors' customers and certain leases, including automobile and equipment leases, which require the Debtors to maintain specified insurance coverage. Any or all of these consequences would be seriously harmful to the Debtors' business and restructuring efforts, as they would expose the Debtors to higher costs and increased risks of loss at a minimum, and ultimately could result in extensive defaults under the Debtors' debt obligations and could prevent the Debtors from doing business in many states. To avoid those consequences, the relief requested herein should be granted.

22. In addition, pursuant to the terms of the Finance Arrangements, the Debtors' obligations are secured by all unearned premiums or dividends payable to the Debtors under the insurance policies covered by the applicable Finance Arrangement. As a result,

AFCO may assert a right to adequate protection of their interests in the financed insurance policies pursuant to section 363(e) of the Bankruptcy Code. AFCO may also seek to obtain relief from the automatic stay to terminate the financed insurance policies. If AFCO succeeds in such a request, the Debtors would likely incur termination penalty charges and be forced to seek replacement insurance coverage. Even if the Debtors are able to purchase replacement insurance coverage, it is doubtful that they would be able to do so on terms and conditions as favorable as those presently in place under the financed insurance policies.

23. Moreover, pursuant to the guidelines (the “**U.S. Trustee Guidelines**”) established by the United States Trustee for the Southern District of Texas (the “**U.S. Trustee**”), the Debtors are obligated to remain current with respect to certain of the policies under the EES Insurance Programs. Should any insurance policy lapse during the pendency of the Debtors’ chapter 11 cases, the U.S. Trustee Guidelines mandate that the Debtors forward proof of policy renewal of that policy to the U.S. Trustee. Therefore, the continuation and renewal of the EES Insurance Programs, on an uninterrupted basis, and the payment of all prepetition and postpetition Insurance Obligations arising under the EES Insurance Programs, is not only essential to preserve the Debtors’ businesses and the value of the Debtors’ estates for all creditors, but also mandated under the U.S. Trustee Guidelines.

**C. The Banks Should be Authorized and Directed to Honor and Pay Checks Issued, and to Make other Transfers to Pay Insurance Obligations**

24. The Debtors further request that the Court authorize and direct the Banks to receive, process, honor and pay any and all checks drawn or electronic funds transferred to pay the Insurance Obligations, whether such checks were presented prior to or after the Commencement Date; provided, however, that such checks or electronic transfers are identified by the Debtors as relating directly to the authorized payment of the Insurance Obligations. The

Debtors also seek authority to issue new postpetition checks, or effect new electronic fund transfers, on account of the Insurance Obligations to replace any prepetition checks or electronic fund transfer requests that may be dishonored or rejected as a result of the commencement of the Debtors' chapter 11 cases.

**D. A Waiver of the Automatic Stay Related to Workers' Compensation Claims is Appropriate**

25. Section 362(a) of the Bankruptcy Code, operates to stay the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title . . . .

11 U.S.C. § 362(a)(1). Section 362, however, permits a debtor or other parties in interest to request a modification or termination of the automatic stay for "cause." Id. § 362(d)(1).

26. To the extent that any of the Debtors' employees hold valid claims under the Workers' Compensation Program (the "**Workers' Compensation Claims**"), the Debtors seek, pursuant to a final order, to modify the automatic stay to permit, at the Debtors' sole discretion, these employees to proceed with their Workers' Compensation Claims in the appropriate judicial or administrative forum. This modification of the automatic stay pertains solely to the Workers' Compensation Claims. Any claims relating to any other insurance policies under the EES Insurance Programs will remain subject to the automatic stay.

27. Cause exists to modify the automatic stay because a stay of the Workers' Compensation Claims could have a detrimental effect on the financial well-being and morale of the Debtors' employees and could lead to the departure of certain employees who are needed at this critical juncture. Such departures would disrupt the Debtors' business to the detriment of all parties in interest. To this end, the Debtors seek to waive both the automatic stay as it

relates to Workers' Compensation Claims, and the corresponding notice requirements under Bankruptcy Rule 4001(d). Furthermore, to the extent required by law or a policy under the Workers' Compensation Program, the Debtors request authority pursuant to a final order, but not the direction, to pay all or any part of a Workers' Compensation Claim directly to an employee, worker, their medical providers, heirs, or legal representatives.

**E. Immediate Relief is Necessary to Avoid Immediate and Irreparable Harm**

28. Bankruptcy Rule 6003 provides that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 20 days after the filing of the petition, grant relief regarding . . . a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition . . . .” FED. R. BANKR. P. 6003.

29. It is vital that the Debtors are able to maintain the EES Insurance Programs. As explained in detail above, the failure to maintain appropriate insurance would expose the Debtors' estates to significant liabilities and run afoul of the U.S. Trustee Guidelines. Accordingly, without satisfying the EES Insurance Obligations, the Debtors' estates would suffer immediate and irreparable harm.

**F. Request for Waiver of Stay**

30. The Debtors further seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of ten (10) days after entry of the order, unless the court orders otherwise.” As set forth in detail above, payment of the Insurance Obligations as proposed herein is essential to prevent potentially irreparable damage to the Debtors' operations, the value of their estates, and their ability to reorganize. Accordingly, the Debtors submit that ample cause exists to justify waiver of the ten

(10) day stay imposed by Bankruptcy Rule 6004(h), and the notice requirements under Bankruptcy Rule 6004(a), if applicable.

**VI.**

**RESERVATION OF RIGHTS**

31. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any party in interest's rights to dispute any claim, or (iii) an approval or assumption of any agreement, contract, program, policy or lease under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission to the validity of any claim.

**VII.**

**NOTICE**

32. 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); (v) all applicable government agencies, to the extent required by the Bankruptcy Rules or the Bankruptcy Local Rules for the Southern District of Texas; and (vi) Marsh, AFCO, and the insurance providers listed on **Exhibit B** to this Motion. 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)

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Houston, Texas 77002  
Telephone: (713) 546-5000  
Facsimile: (713) 224-9511

Attorneys for Debtors  
and Debtors in Possession

**EXHIBIT A****LIST OF DEBTORS**

<b>Debtor</b>	<b>Last Four Digits of Federal Tax I.D. No.</b>
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**

**LIST OF INSURANCE POLICIES**

Coverage	Insurer	Policy Number	Policy Period	General Limit(s)	General Deductible(s)	Premium
Workers' Compensation & Employer's Liability	Commerce & Industry Insurance Company	1591317 (TX)	4/2/09 – 4/2/10	Workers' Compensation: Statutory Employer's Liability: \$2,000,000 Maritime Employer's Liability: \$2,000,000 Stop Gap Liability: \$2,000,000	\$250,000	\$1,238,004
Workers' Compensation & Employer's Liability	Commerce & Industry Insurance Company	1591318 (All Other States)	4/2/09 – 4/2/10	Workers' Compensation: Statutory Employer's Liability: \$2,000,000 Maritime Employer's Liability: \$2,000,000 Stop Gap Liability: \$2,000,000	\$250,000	\$1,380,801
General Liability	National Union Fire Insurance Company	2803058	4/2/09 – 4/2/10	\$2,000,000 Each Occurrence Combined Single Limit \$2,000,000 Personal and Advertising Injury \$2,000,000 Damage to Premises Rented \$100,000 Medical Expense (Any One Person) \$2,000,000 Employee Benefits Liability \$4,000,000 General Aggregate Limit – Per Policy \$4,000,000 Products – Completed Operations Aggregate Limit	\$100,000	\$400,425
Automobile Liability	National Union Fire Insurance	4806977	4/2/09 – 4/2/10	Coverage Symbol 1 Combined Single Limit:	Coverage Symbol 1:	\$875,511

Coverage	Insurer	Policy Number	Policy Period	General Limit(s)	General Deductible(s)	Premium
	Company			\$2,000,000 Coverage Symbol 10 Limit except for Hired Cars is Actual Cash Value or Cost To Repair, whichever is less Coverage Symbol 8 & 9 Limit for Hired Cars is Actual Cash Value or Cost to Repair, whichever is less, Subject to a Maximum Limit of \$250,000	\$250,000 Physical Damage \$5,000 Coverage Symbol 10: Comprehensive \$5,000 Collision: \$5,000 Coverage Symbol 8 & 9: Comprehensive \$5,000 Collision \$5,000	
Umbrella Liability	Commerce & Industry Insurance Company	BE 5506728	4/2/09 – 4/2/10	\$25,000,000 Per Occurrence \$25,000,000 General Aggregate \$25,000,000 Products/Completed Operations Aggregate \$250,000 Crisis Response Limit of Insurance \$50,000 Excess Casualty Crisis Fund Limit of Insurance Excess of Underlying Insurance	\$10,000 Self Insured Retention	\$575,000
Excess Liability – 2nd Layer	XL Insurance America, Inc.	US00010875LIO9A	4/2/09 – 4/2/10	\$25,000,000 xs \$25,000,000	N/A	\$150,000
Property	Fireman's Fund	MX197845153	6/1/09 – 6/1/10	\$2,145,000 Scheduled Buildings	\$1,000 Property Damage \$25,000 Named Windstorm	\$12,870

Coverage	Insurer	Policy Number	Policy Period	General Limit(s)	General Deductible(s)	Premium
Flood	American Bankers Insurance Company of Florida	AB000065384	7/31/09-7/31/10	\$450,000 Buildings, \$50,000 Contents	\$500	\$1,429
Marine Cargo and Contractors Equipment	Underwriters at Lloyds	605528	4/17/09 – 4/17/10	\$10,000,000 Any One Loss or Occurrence \$500,000 Misc. Unscheduled Tools and Equipment \$1,000,000 Any One Loss or Occurrence in respect of subject matter	\$75,000 except \$100,000 for units valued > \$1,000,000 \$125,000 for units valued > \$1,500,000	\$418,039
Directors, Officers and Organization/Employment Practices/Fiduciary Liability	U.S. Specialty Insurance Co.	14-MGU-09-A19504	7/11/09 – 7/11/10	\$5,000,000 Combined Single Limit Includes \$3,000,000 Fiduciary Limit	\$25,000 Includes \$2,500 Fiduciary Retention	\$75,000 + <u>\$125,000 run off</u> \$200,000 Total
Excess D&O	Illinois National Insurance Company	02-880-13-30	7/11/09 – 7/11/10	\$5,000,000 xs \$5,000,000	N/A	\$49,238 + <u>\$82,063 run off</u> \$131,301 Total

Coverage	Insurer	Policy Number	Policy Period	General Limit(s)	General Deductible(s)	Premium
Miscellaneous Professional Liability	ACE American Insurance Co.	EON G2445793A 001	4/12/09 – 4/12/10	\$5,000,000	\$250,000	\$15,944
Contractors Pollution Liability	American International Specialty Lines Company	CPL 13303665	10/29/08 – 10/29/09	\$5,000,000 Each Loss – Legal Liability \$250,000 Each Loss – Emergency Response Costs \$6,000,000 Aggregate	\$5,000 Each Loss	\$97,016

**EXHIBIT C**

**PROPOSED INTERIM ORDER**

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

In re

EXPRESS ENERGY SERVICES  
OPERATING, LP, *et al.*,

Debtors.

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Chapter 11

Case No. 09-\_\_\_\_ (\_\_\_\_)

Joint Administration Requested

**INTERIM ORDER PURSUANT TO SECTIONS 105(a), 362(d), 363(b), AND 503(b)  
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 4001, 6003, AND 6004  
AUTHORIZING DEBTORS TO (I) CONTINUE THEIR WORKERS' COMPENSATION  
PROGRAM AND GENERAL INSURANCE PROGRAMS, (II) PAY ALL PREPETITION  
INSURANCE OBLIGATIONS IN RESPECT THEREOF, AND (III) DIRECTING  
FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND  
TRANSFERS RELATED TO SUCH INSURANCE OBLIGATIONS**

Upon the Emergency Motion (the "Motion")<sup>1</sup> 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") for Interim (the "Interim Order") and Final Orders, Pursuant to Sections 105(a), 362(d), 363(b), and 503(b) of chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 4001, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to (i) Continue their Workers' Compensation Program and General Insurance Programs, including, without limitation, all of the insurance policies set forth on Exhibit 1 annexed hereto (collectively, the "EES Insurance Programs"), (ii) Pay all Insurance Obligations in Respect Thereof, and (iii) Direct Banks and Financial Institutions (the "Banks") to Honor and Process Checks and Transfers Related to Such Obligations, all as more fully described in the Motion, and upon

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

consideration of the Declaration 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 relief requested in the Motion is GRANTED on an interim basis to the extent provided herein.
2. The Debtors are authorized, but not directed, to maintain the EES Insurance Programs without interruption and in accordance with the same practices and procedures that were in effect prior to the Commencement Date.
3. Pursuant to this Interim Order, the Debtors shall only pay Finance Payments that become due and payable on or before the Final Hearing (defined below).
4. The Banks are authorized and directed to honor, process, and pay, to the extent of funds on deposit, any and all prepetition checks or electronic fund transfer requests issued by the Debtors in respect of any Insurance Obligations, whether pre- or postpetition.
5. 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.

6. Nothing in this Interim Order or the Motion shall be construed as prejudicing the rights of the Debtors to dispute or contest the amount of or basis for any claims, including, but not limited to, Workers' Compensation Claims against the Debtors in connection with or relating to the EES Insurance Programs.

7. To the extent that any insurance policy under the EES Insurance Programs or any related contract or agreement is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, neither this Interim Order nor any payments made in accordance with this Interim Order shall constitute the postpetition assumption of any such insurance policy, contract, or related agreement pursuant to section 365 of the Bankruptcy Code.

8. 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.

9. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

10. 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. The Court shall retain jurisdiction to consider all matters arising from the interpretation or implementation of this Interim Order.

Dated: Houston, Texas  
\_\_\_\_\_, 2009

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**LIST OF INSURANCE POLICIES**

Coverage	Insurer	Policy Number	Policy Period	General Limit(s)	General Deductible(s)	Premium
Workers' Compensation & Employer's Liability	Commerce & Industry Insurance Company	1591317 (TX)	4/2/09 – 4/2/10	Workers' Compensation: Statutory Employer's Liability: \$2,000,000 Maritime Employer's Liability: \$2,000,000 Stop Gap Liability: \$2,000,000	\$250,000	\$1,238,004
Workers' Compensation & Employer's Liability	Commerce & Industry Insurance Company	1591318 (All Other States)	4/2/09 – 4/2/10	Workers' Compensation: Statutory Employer's Liability: \$2,000,000 Maritime Employer's Liability: \$2,000,000 Stop Gap Liability: \$2,000,000	\$250,000	\$1,380,801
General Liability	National Union Fire Insurance Company	2803058	4/2/09 – 4/2/10	\$2,000,000 Each Occurrence Combined Single Limit \$2,000,000 Personal and Advertising Injury \$2,000,000 Damage to Premises Rented \$100,000 Medical Expense (Any One Person) \$2,000,000 Employee Benefits Liability \$4,000,000 General Aggregate Limit – Per Policy \$4,000,000 Products – Completed Operations Aggregate Limit	\$100,000	\$400,425
Automobile Liability	National Union Fire Insurance	4806977	4/2/09 – 4/2/10	Coverage Symbol 1 Combined Single Limit:	Coverage Symbol 1:	\$875,511

Coverage	Insurer	Policy Number	Policy Period	General Limit(s)	General Deductible(s)	Premium
	Company			\$2,000,000 Coverage Symbol 10 Limit except for Hired Cars is Actual Cash Value or Cost To Repair, whichever is less Coverage Symbol 8 & 9 Limit for Hired Cars is Actual Cash Value or Cost to Repair, whichever is less, Subject to a Maximum Limit of \$250,000	\$250,000 Physical Damage \$5,000 Coverage Symbol 10: Comprehensive \$5,000 Collision: \$5,000 Coverage Symbol 8 & 9: Comprehensive \$5,000 Collision \$5,000	
Umbrella Liability	Commerce & Industry Insurance Company	BE 5506728	4/2/09 – 4/2/10	\$25,000,000 Per Occurrence \$25,000,000 General Aggregate \$25,000,000 Products/Completed Operations Aggregate \$250,000 Crisis Response Limit of Insurance \$50,000 Excess Casualty Crisis Fund Limit of Insurance Excess of Underlying Insurance	\$10,000 Self Insured Retention	\$575,000
Excess Liability – 2nd Layer	XL Insurance America, Inc.	US00010875LIO9A	4/2/09 – 4/2/10	\$25,000,000 xs \$25,000,000	N/A	\$150,000
Property	Fireman's Fund	MX197845153	6/1/09 – 6/1/10	\$2,145,000 Scheduled Buildings	\$1,000 Property Damage \$25,000 Named Windstorm	\$12,870

Coverage	Insurer	Policy Number	Policy Period	General Limit(s)	General Deductible(s)	Premium
Flood	American Bankers Insurance Company of Florida	AB000065384	7/31/09-7/31/10	\$450,000 Buildings, \$50,000 Contents	\$500	\$1,429
Marine Cargo and Contractors Equipment	Underwriters at Lloyds	605528	4/17/09 – 4/17/10	\$10,000,000 Any One Loss or Occurrence \$500,000 Misc. Unscheduled Tools and Equipment \$1,000,000 Any One Loss or Occurrence in respect of subject matter	\$75,000 except \$100,000 for units valued > \$1,000,000 \$125,000 for units valued > \$1,500,000	\$418,039
Directors, Officers and Organization/Employment Practices/Fiduciary Liability	U.S. Specialty Insurance Co.	14-MGU-00-A19504	7/11/09 – 7/11/10	\$5,000,000 Combined Single Limit Includes \$3,000,000 Fiduciary Limit	\$25,000 Includes \$2,500 Fiduciary Retention	\$75,000 + <u>\$125,000 run off</u> \$200,000 Total
Excess D&O	Illinois National Insurance Company	02-880-13-30	7/11/09 – 7/11/10	\$5,000,000 xs \$5,000,000	N/A	\$49,238 + <u>\$82,063 run off</u> \$131,301 Total

Coverage	Insurer	Policy Number	Policy Period	General Limit(s)	General Deductible(s)	Premium
Miscellaneous Professional Liability	ACE American Insurance Co.	EON G2445793A 001	4/12/09 – 4/12/10	\$5,000,000	\$250,000	\$15,944
Contractors Pollution Liability	America International Specialty Lines Company	CPL 13303665	10/29/08 – 10/29/09	\$5,000,000 Each Loss – Legal Liability \$250,000 Each Loss – Emergency Response Costs \$6,000,000 Aggregate	\$5,000 Each Loss	\$97,016

**EXHIBIT D**

**PROPOSED FINAL ORDER**

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

**FINAL ORDER PURSUANT TO SECTIONS 105(a), 362(d), 363(b), AND 503(b) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 4001, 6003, AND 6004 AUTHORIZING DEBTORS TO (I) CONTINUE THEIR WORKERS’ COMPENSATION PROGRAM AND GENERAL INSURANCE PROGRAMS, (II) PAY ALL PREPETITION INSURANCE OBLIGATIONS IN RESPECT THEREOF, AND (III) DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH INSURANCE OBLIGATIONS**

Upon the Emergency Motion (the “Motion”)<sup>1</sup> 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”) for Interim and Final Orders, Pursuant to Sections 105(a), 362(d), 363(b), and 503(b) of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 4001, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to (i) Continue their Workers’ Compensation Program and General Insurance Programs, including, without limitation, all of the insurance policies set forth on Exhibit 1 annexed hereto (collectively, the “EES Insurance Programs”); (ii) Pay all Insurance Obligations in Respect Thereof; and (iii) Direct Banks and Financial Institutions (the “Banks”) to Honor and Process Checks and Transfers Related to Such Obligations, all as more fully described in the Motion, and upon consideration of the Declaration

<sup>1</sup> Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in 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 it is ORDERED that

1. The relief requested in the Motion is GRANTED on a final basis to the extent provided herein.

2. The Debtors are authorized, but not directed, to maintain the EES Insurance Programs without interruption and in accordance with the same practices and procedures that were in effect prior to the Commencement Date.

3. The Debtors are authorized, but not directed, to pay, in their sole discretion, all prepetition Insurance Obligations, including, but not limited to, any Finance Payments.

4. Pursuant to section 362(d) of the Bankruptcy Code, to the extent any of the Debtors' employees hold valid Workers' Compensation Claims under the Workers' Compensation Program, such employees are authorized, at the Debtors' discretion, to proceed with their Workers' Compensation Claims through and including the collection of any judgment in the appropriate judicial or administrative forum under the Workers' Compensation Program;

provided, that, the prosecution of such Workers' Compensation Claims is in accordance with the Workers' Compensation Program and the recoveries are limited to the proceeds available under the applicable policies under the Workers' Compensation Program.

5. The Banks are authorized and directed to honor, process, and pay, to the extent of funds on deposit, any and all prepetition checks or electronic fund transfer requests issued by the Debtors in respect of any Insurance Obligations, whether pre- or postpetition.

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 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. Nothing in this Order or the Motion shall be construed as prejudicing the rights of the Debtors to dispute or contest the amount of or basis for any claims, including, but not limited to, Workers' Compensation Claims against the Debtors in connection with or relating to the EES Insurance Programs.

8. To the extent that any insurance policy under the EES Insurance Programs or any related contract or agreement is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, neither this Order nor any payments made in accordance with this Order shall constitute the postpetition assumption of any such insurance policy, contract, or related agreement pursuant to section 365 of the Bankruptcy Code.

9. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. 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. The Court shall retain jurisdiction to consider all matters arising from the interpretation or implementation of this Order.

Dated: Houston, Texas  
\_\_\_\_\_, 2009

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

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Umbrella Liability	Commerce & Industry Insurance Company	BE 5506728	4/2/09 – 4/2/10	\$25,000,000 Per Occurrence \$25,000,000 General Aggregate \$25,000,000 Products/Completed Operations Aggregate \$250,000 Crisis Response Limit of Insurance \$50,000 Excess Casualty Crisis Fund Limit of Insurance Excess of Underlying Insurance	\$10,000 Self Insured Retention	\$575,000
Excess Liability – 2nd Layer	XL Insurance America, Inc.	US00010875LIO9A	4/2/09 – 4/2/10	\$25,000,000 xs \$25,000,000	N/A	\$150,000
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