

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

IN RE:	§	
	§	
EXPRESS ENERGY SERVICES, L.P., et al.	§	CASE NO. 09-38044
	§	(Chapter 11)
DEBTORS	§	Jointly Administered

**MERIT ENERGY COMPANY, LLC'S MOTION FOR MODIFICATION  
OF THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1)**

THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. IF IT IS GRANTED, THE MOVANT MAY ACT OUTSIDE OF THE BANKRUPTCY PROCESS. IF YOU DO NOT WANT THE STAY LIFTED, IMMEDIATELY CONTACT THE MOVING PARTY TO SETTLE. IF YOU CANNOT SETTLE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY AT LEAST 7 DAYS BEFORE THE HEARING. IF YOU CANNOT SETTLE, YOU MUST ATTEND THE HEARING. EVIDENCE MAY BE OFFERED AT THE HEARING AND THE COURT MAY RULE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

THERE WILL BE A HEARING ON THIS MATTER ON DECEMBER 22, 2009 AT 9:00 A.M. IN COURTROOM 600, 6<sup>TH</sup> FLOOR, 515 RUSK AVENUE, HOUSTON, TEXAS 77002.

TO THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE:

Merit Energy Company, L.L.C. ("Merit"), by and through undersigned counsel, file this *Motion for Modification of the Automatic Stay Pursuant to 11 U.S.C. § 362(d)(1)* (the "Motion"), and in support of the Motion would respectfully show the Court the following:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157(b). This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(G). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**II. FACTUAL BACKGROUND**

2. Merit brought suit against Express Energy Services, L.L.C. (“Express”) on August 25, 2008, seeking damages in connection with placement of the casing in the Scharbauer “B” No. 17, API-42-317-35059 well (the “Well”) in Martin County, Texas in the 133rd Judicial District Court for Harris County, Texas entitled, *Merit Energy Company v. Express Energy Services, L.L.C.*, Cause No. 2008-51078 (the “State Court” matter).

3. Express filed an answer to Merit’s claims denying all allegations and further asserting a counterclaim against Merit for unpaid invoices.

4. The parties reached an agreement to compromise and settle their respective claims on or about October 20, 2009, to be funded solely by Express’ insurer, with each party releasing any and all claims against the other. The settlement does not does not involve property of the estate or require Express to fund anything with its own funds.

5. This bankruptcy action was filed on October 27, 2009, automatically staying all proceedings in the State Court matter.

### **III.RELIEF SOUGHT**

6. By this Motion, Merit seeks modification of the automatic stay to permit it to finalize and close the settlement agreement reached with Express prior to the filing of this bankruptcy action. The settlement involves only insurance proceeds and the mutual release of claims between Merit and Express. It does not does not involve property of the estate or require Express to fund anything with its own funds. The parties need only to execute the Mutual General Release, Indemnity Agreement, and Assignment, file a dismissal of the State Court matter, and negotiate the settlement proceeds funded by Express’ insurers to finalize and close the settlement of the State Court matter.

WHEREFORE Merit requests entry of an Order modifying the automatic stay to permit it to

finalize and close the settlement agreement reached with Express prior to the filing of this bankruptcy action.

Respectfully submitted,

/s/ Michael A. Golemi (by permission)

Michael A. Golemi  
Attorney-in-Charge  
State Bar No. 24047536  
Fed. Id. No. 559843  
First City Tower  
1001 Fannin, Suite 1800  
Houston, Texas 77002  
Telephone: (713) 651-2900  
Facsimile: (713) 651-2908  
E-Mail: [magolemi@liskow.com](mailto:magolemi@liskow.com)

ATTORNEY FOR MERIT ENERGY COMPANY,  
L.L.C.

**OF COUNSEL**

LISKOW & LEWIS

John G. Almy  
State Bar No. 24050221  
Fed. Id. No. 636999  
First City Tower  
1001 Fannin, Suite 1800  
Houston, Texas 77002  
Telephone: (713) 651-2900  
Facsimile: (713) 651-2908  
E-Mail: [jgalmy@liskow.com](mailto:jgalmy@liskow.com)

**CERTIFICATE OF CONFERENCE**

This is to certify that the undersigned conferred with counsel for the Debtor regarding the relief requested in the Motion. The parties have reached an agreement on the requested relief and, pursuant to Bankruptcy Rule 4001(d)(1)(A)(iii), have submitted an agreed order to the Court for its consideration.

/s/ Michael A. Golemi (by permission)  
Michael A. Golemi

**CERTIFICATE OF SERVICE**

I, John G. Almy, certify that I am, and at all times during the service of process was, not less than 18 years of age and not a party to the matter concerning which service of process was made. I further certify that the service of the foregoing Motion was accomplished on December 3, 2009, by mail service - regular, first class United States mail, postage fully pre-paid, addressed to:

Express Energy Services Operating, L.P.,  
Phoenix Tower  
3200 Southwest Freeway, Suite 2000  
Houston, TX 77027

Under penalty of perjury, I declare that the foregoing is true and correct.

The undersigned also certifies that, on December 3, 2009, a true and correct copy of the Motion was served electronically on all parties entitled to receive ECF notifications in this case, including counsel for the Debtor at alfredo.perez@weil.com.

/s/ John G. Almy  
John G. Almy

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

IN RE:	§	
	§	
EXPRESS ENERGY SERVICES, L.P., et al.	§	CASE NO. 09-38044
	§	(Chapter 11)
DEBTORS	§	Jointly Administered

**AGREED ORDER GRANTING MERIT ENERGY COMPANY, LLC'S MOTION FOR  
MODIFICATION OF THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1)**  
**[Relates to Docket No. \_\_\_\_]**

Having considered the *Motion for Modification of the Automatic Stay Pursuant to 11 U.S.C. § 362(d)(1)* (the "Motion")<sup>1</sup> filed by Merit Energy Company, L.L.C. ("Merit"), the agreement of the parties, and finding that: (i) the court has jurisdiction to consider the motion, (ii) venue is proper, (iii) due and proper notice of the motion has been provided, (iv) cause exists to modify the automatic stay; and (v) the motion is meritorious and should be granted, it is hereby

ORDERED that the Motion is GRANTED; it is further

ORDERED that the automatic stay is modified to permit Merit and Express Energy Services, L.L.C. ("Express") to finalize and close the settlement agreement reached prior to the filing of this bankruptcy action.

ORDERED that the relief provided herein shall apply only to the State Court matter entitled, *Merit Energy Company v. Express Energy Services, L.L.C.*, Cause No. 2008-51078, pending in the 133rd Judicial District Court for Harris County, Texas, and is limited to execution of the Mutual General Release, Indemnity Agreement and Assignment by Merit and Express,

---

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

filing a dismissal of the State Court matter, and negotiation of the settlement proceeds funded by Express' insurers; and it is further

ORDERED that the ten-day stay otherwise imposed by Bankruptcy Rule 4001(a)(3) is waived and shall have no force or effect with respect to the implementation of this Order. As such, this Order shall be of immediate force and effect upon entry.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2009

---

Jeff Bohm  
United States Bankruptcy Judge

Agreed as to form and substance by:

/s/ Michael A. Golemi (by permission)  
Michael A. Golemi  
Attorney-in-Charge  
State Bar No. 24047536  
Fed. Id. No. 559843  
First City Tower  
1001 Fannin, Suite 1800  
Houston, Texas 77002  
Telephone: (713) 651-2900  
Facsimile: (713) 651-2908  
E-Mail: magolemi@liskow.com

ATTORNEY FOR  
MERIT ENERGY COMPANY, L.L.C.

/s/ Alfredo R. Perez (by permission)  
WEIL GOTSHAL & MANGES LLP  
Alfredo R. Perez  
700 Louisiana Street, Suite 1600  
Houston, TX 77002  
Telephone: (713) 546-5040  
  
ATTORNEY FOR THE DEBTOR