

**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
DEBTORS § (Chapter 11)
§ Jointly Administered

**SMITH INTERNATIONAL, INC.’S AND THOMAS ENERGY SERVICES, INC.’S
UNOPPOSED 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 TWO DAYS BEFORE THE HEARING. IF YOU FILE YOUR RESPONSE LESS THAN 5 DAYS BEFORE THE HEARING, YOU MUST SEND A COPY TO THE MOVANT BY FACSIMILE, BY HAND, OR BY ELECTRONIC DELIVERY. 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 JANUARY 5, 2010 AT 9:00 A.M. IN COURTROOM 600, 6TH FLOOR, 515 RUSK AVENUE, HOUSTON, TEXAS 77002.

TO THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE:

Smith International, Inc. (“Smith”) and Thomas Energy Services, Inc. (“Thomas” and together with Smith, the “Movants”), by and through undersigned counsel, file this *Unopposed 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. On October 30, 2009, Amy Jost (“Plaintiff”), individually and as administrator of the estate of Robert Jost, deceased (“Decedent”), and as next friend of Alyson and Robyn Jost, minor children of Decedent, brought suit against Movants, Express Energy Services, L.L.C.¹ (the “Debtor”), EnCana Oil & Gas (USA) Inc. (“EnCana”), and other defendants in the 82nd Judicial District Court for Robertson County, Texas (the “State Court”).

3. Plaintiff’s Original Petition, attached hereto as Exhibit A, alleges the following facts:

- On or about April 22, 2009, Robert Jost, an employee of Express Energy, went upon the premises of EnCana in order to carry out duties for his employer, Express Energy, related to operations conducted upon a gas well in Robertson County, Texas (the “Wellsite”).
- While on the premises, a blowout occurred and a string of tubing was ejected from the wellbore.
- Decedent was struck by the ejected tubing and died as a result of the injuries sustained therefrom.

4. Thomas, a wholly-owned subsidiary of Smith, provided a blowout preventer and related equipment to the Wellsite, and its equipment was present at the Wellsite at the time of the blowout. Thomas’s provision of the goods and services to EnCana was governed by a written master service agreement dated January 15, 2007 (the “Thomas MSA”), a true and correct copy of

¹ On April 25, 2006, a certificate of merger was filed with the Texas Secretary of State’s office evidencing the merger of Express Energy Services, L.L.C., a Louisiana limited liability company, into Express Energy Services Operating, L.P. (“Express Operating”), a debtor (Case No. 09-38044) in the above-captioned, jointly-administered chapter 11 bankruptcy case.

which is attached hereto as Exhibit B.

5. At the time of the accident resulting in Decedent's death, Debtor had also provided goods and services to EnCana pursuant to a separate master services agreement, dated June 15, 2006 (the "Express MSA"), a true and correct copy of which is attached hereto as Exhibit C. The Express MSA provides, in pertinent part, the following:

"'EnCana Group' shall mean EnCana (as defined above), co-owners at the Site, joint venturers, partners, other contractors and subcontractors, and their respective directors, officers, employees representatives and agents."

See Express MSA, at Section 1.h.

12. Indemnities.

a. Contractor hereby agrees to release, defend, indemnify and hold the EnCana Group harmless from and against any and all loss, cost, damage or expense of every kind and nature (including without limitation, fines, penalties, remedial obligations, court costs and expenses and reasonable attorneys' fees, including attorneys' fees incurred in the enforcement of this indemnity provision (hereinafter referred to collectively as "Indemnifiable Claims"), arising out of bodily injury (including sickness to or death of persons and losses therefrom to relatives or dependents) to the Contractor Group, or loss or destruction of property or interests in property of the Contractor Group, in any manner caused by, directly or indirectly resulting from, incident to, connected with or arising out of performance of the Work, WHETHER OR NOT RESULTING IN WHOLE OR IN PART FROM THE SOLE, CONCURRENT, OR COMPARATIVE NEGLIGENCE, OR STRICT LIABILITY OF THE ENCANA GROUP, OR ANY DEFECT IN THE PREMISES, EQUIPMENT OR TOOLS OWNED, OPERATED OR CONTROLLED BY THE ENCANA GROUP. Contractor agrees that this voluntary and mutual indemnity agreement will be supported by insurance of the types and in at least the minimum amounts required in Section 13, and shall be primary to any other insurance provided by the EnCana Group.

See Express MSA, at Section 12.a.

13. Insurance.

a. Contractor shall secure and maintain, and shall require its

Subcontractors to secure and maintain, during the term of this Master Service Agreement, the following insurance coverages with limits not less than amounts specified (unless otherwise agreed to in writing by EnCana) and with companies satisfactory to EnCana, and shall furnish certificates of such insurance satisfactory to EnCana before commencing the Work.

ii. Comprehensive General Liability Insurance INCLUDING CONTRACTUAL LIABILITY, with minimum limits of liability for injury, death, or property damage of \$2,000,000 combined single limit per occurrence.

b. ALL LIABILITY COVERAGE (INCLUDING EMPLOYER'S LEGAL LIABILITY) CARRIED BY CONTRACTOR WITH RESPECT TO THE LIABILITIES ASSUMED BY CONTRACTOR HEREUNDER SHALL EXTEND TO AND PROTECT THE ENCANA GROUP TO THE FULL EXTENT AND AMOUNT OF SUCH COVERAGE, INCLUDING EXCESS OR UMBRELLAS INSURANCES, AND SHALL BE PRIMARY TO, AND RECEIVE NO CONTRIBUTION FROM, ANY OTHER INSURANCE OR SELF-INSURANCE PROGRAMS MAINTAINED BY OR ON BEHALF OF OR BENEFITING THE ENCANA GROUP. THE LIMITS AND COVERAGES OF THE INSURANCE OBTAINED BY CONTRACTOR, EXCEPT TO THE EXTENT PROHIBITED OR REQUIRED BY LAW OR STATUTE, SHALL IN NO WAY LIMIT THE LIABILITIES OR OBLIGATIONS ASSUMED BY CONTRACTOR. ALL OF CONTRACTOR'S LIABILITY INSURANCE POLICIES SHALL NAME THE ENCANA GROUP AS AN ADDITIONAL INSURED AND CONTAIN A WAIVER ON THE PART OF THE INSURER, BY SUBROGATION OR OTHERWISE, OF ALL RIGHTS AGAINST THE ENCANA GROUP. This provision shall be independent of any obligations Contractor has under Section 12 hereof.

See Express MSA, at Section 13.a, a.ii., and b.

6. As a contractor of EnCana, Movants are part of the "EnCana Group" and, thus, are intended third-party-beneficiaries under the Express MSA. As third-party-beneficiaries under the Express MSA, Movants are entitled to certain benefits under the Express MSA, *viz.*, the indemnities and insurance set forth above in Sections 12 and 13, respectively.

III. RELIEF SOUGHT

7. By this Motion, Movants seek modification of the automatic stay to permit them to pursue their Express MSA claims against the Debtor's insurers. Debtor advises that it is not opposed to the relief requested.

WHEREFORE Movants request entry of an order modifying the automatic stay to permit them to pursue their Express MSA claims against the Debtor's insurers.

Dated: December 10, 2009
Houston, Texas

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

/s/ Clinton R. Snow

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*ATTORNEYS FOR SMITH INTERNATIONAL, INC.
AND THOMAS ENERGY SERVICES, INC.*

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.

By: /s/ Peter Scaff
Peter Scaff

CERTIFICATE OF SERVICE

I, Clinton R. Snow, 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 10, 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 10, 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.

By: /s/ Clinton R. Snow
Clinton R. Snow