



ENTERED
05/24/2011

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. 09-38044
	§	
	§	
Reorganized Debtors.	§	Jointly Administered
	§	

AGREED STIPULATION AND ORDER REDUCING AND ALLOWING PROOF OF CLAIM NUMBER 420 FILED BY SIEMENS FINANCIAL SERVICES, INC.

[Related to Docket No. ____]

Express Energy Services Operating, LP (“**EES Operating**”) and its affiliated reorganized debtors in the above-captioned bankruptcy cases (collectively, the “**Debtors**” or the “**Reorganized Debtors**”) and Siemens Financial Services, Inc. (“**Siemens**,” and together with the Reorganized Debtors, the “**Parties**”), by and through their respective undersigned counsel, hereby enter into this agreed stipulation and order (this “**Agreed Stipulation and Order**”).

RECITALS

WHEREAS, on October 27, 2009 (the “**Commencement Date**”), the Debtors commenced voluntary cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “**Court**”);

WHEREAS, on December 7, 2009, the Court entered an order (Docket No. 189, the “**Confirmation Order**”) confirming the Debtors’ Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the “**Plan**”), which became effective in accordance with its own terms on December 31, 2009;

WHEREAS, prior to the Commencement Date, (i) Siemens (as assignee of First National Capital Corporation), EES Operating, and Express Energy Services CT, LP entered into that certain Master Equipment Lease Agreement dated as of September 17, 2007 (as amended and/or modified from time to time, the "**Lease Agreement**"), and (ii) Express Energy Services Holding, LP executed that certain Corporate Guaranty dated as of September 19, 2007 (the "**Guaranty**," together with the Lease Agreement, the "**Lease Documents**");

WHEREAS, pursuant to the Lease Documents, the Debtors leased certain equipment from Siemens (the "**Siemens Equipment**");

WHEREAS, on November 17, 2009, this Court entered an Order Pursuant to Section 365(a) of the Bankruptcy Code and Bankruptcy Rules 6006 and 9014 Granting the Debtors' Expedited Motion to Reject an Equipment Lease Effective as of October 31, 2009 [Docket No. 124];

WHEREAS, on December 17, 2009, Siemens filed Proof of Claim No. 422,¹ which asserts a general unsecured claim for "no less than \$1,943,793.94" for rejection and other damages relating to the Lease Documents;

WHEREAS, subsequent to filing Proof of Claim No. 422, Siemens sold the Siemens Equipment (the "**Sale**"). As a result of the Sale, Siemens received net proceeds of \$1,046,200.00 (the "**Net Sale Proceeds**"); and

WHEREAS, in light of Siemens' receipt of the Net Sale Proceeds, and to resolve any and all disputes relating to the Lease Documents, the Sale, and/or the Siemens Equipment,

¹ On December 17, 2009, Siemens also filed Proofs of Claim Nos. 420 and 421. On August 11, 2010, this Court disallowed and expunged Proofs of Claim Nos. 420 and 421 on the basis that Proofs of Claim Nos. 420 and 421 were each redundant of Proof of Claim No. 422 [Docket No. 316].

the Parties entered into this Agreed Stipulation and Order to reduce and allow Proof of Claim No. 422.

AGREED STIPULATION AND ORDER

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by
and between the Parties that:

1. Reduction and Allowance of Proof of Claim No. 422. Proof of Claim No. 422 is reduced and allowed as a Class 4 General Unsecured Claim (as defined in the Plan) against EES Operating in the amount of \$897,593.94 (the “**Allowed Claim**”). The Allowed Claim is in full and final satisfaction of all claims asserted in Proof of Claim No. 422. The Allowed Claim shall be satisfied in accordance with the Plan and the Confirmation Order.
2. Mutual Releases. Except as otherwise provided herein, Siemens, on behalf of itself and its successors and assigns, forever release and discharge the Reorganized Debtors, the Debtors, their successors and assigns, and professionals, and the Reorganized Debtors and the Debtors, on behalf themselves and their respective successors and assigns, forever release and discharge Siemens, its successors and assigns, and professionals, from any and all actions, suits, judgments, claims, proofs of claim, demands, damages, attorneys’ fees, causes of action, debts, liabilities, or controversies of any kind whatsoever, whether at law or in equity, whether before a local, state or federal court or state or federal administrative agency or commission, or arbitration administrator, and whether now known or unknown, matured or unmatured, liquidated or unliquidated, that any of the Parties now have or may have had, or hereafter claim to have with respect to, arising under or relating to Proof of Claim No. 422, the Lease Documents, the Sale, and/or the Siemens Equipment. Nothing in this paragraph, however, shall constitute a release of any obligations under paragraph 1 of this Agreed Stipulation and Order.

3. Reservation of Rights. Except as expressly provided herein, the Parties hereby reserve all of their rights under any applicable law.

4. Authority. The signatories to this Agreed Stipulation and Order expressly represent and warrant that they have the requisite power, authority and legal capacity to enter into and execute this Agreed Stipulation and Order.

5. Complete Agreement. This Agreed Stipulation and Order is the entire agreement between the Parties with respect to the subject matter of this Agreed Stipulation and Order. All representations, warranties, inducements, and/or statements of intention made by the Parties are embodied herein, and neither Party relied upon, shall be bound by, or shall be liable for any alleged representation, warranty, inducement, or statement of intention that is not expressly set forth herein.

6. No Admission of Liability. The execution of this Agreed Stipulation and Order by either Party does not constitute, imply or evidence the truth of any claim, the admission of any liability, the validity of any defense, or the existence of any circumstances or facts that could constitute a basis for any claim, liability or defense, other than for the purpose of enforcing the terms and provisions of this Agreed Stipulation and Order.

7. Drafting and Construction. The Parties acknowledge that this Agreed Stipulation and Order is the joint work product of all of the Parties, and that, accordingly, in the event of ambiguities, no inferences shall be drawn against any Party on the basis of authorship of this Agreed Stipulation and Order.

8. Counterparts. This Agreed Stipulation and Order may be executed in any number of counterparts, and all such counterparts, taken together, shall be deemed to constitute one and the same instrument.

9. Retention of Jurisdiction. The Court shall retain exclusive jurisdiction over any and all disputes arising out of, or otherwise relating to, this Agreed Stipulation and Order.

10. Binding Effect. This Agreed Stipulation and Order shall be binding on the Parties from the date of its execution, but is expressly subject to, and contingent upon, its approval by the Court. If the Court does not approve this Agreed Stipulation and Order, it shall be null and void.

By: /s/ Alfredo R. Pérez
Alfredo R. Pérez

By: /s/ Stephanie K. Hor-Chen
Stephanie K. Hor-Chen

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Counsel for Siemens Financial Services, Inc.

The foregoing Agreed Stipulation and Order **IS HEREBY APPROVED AND ORDERED** by the Court.

Dated: Houston, Texas
May 24, 2011



HONORABLE JEFF BOHM
UNITED STATES BANKRUPTCY JUDGE