

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 RELATING TO CLINT PARKISON

[Related to Docket No. ____]

Clint Parkison and Express Energy Services Operating, LP, and its affiliated reorganized debtors in the above-captioned bankruptcy cases (collectively, the “**Debtors**” or the “**Reorganized Debtors**”), 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 (the “**Effective Date**”);

WHEREAS, on the Effective Date, the automatic stay imposed by section 362 of the Bankruptcy Code (the “**Automatic Stay**”) was terminated pursuant to the terms of the Plan and Confirmation Order (as more fully described therein);

WHEREAS, on or about June 3, 2009, Parkison allegedly fell off of certain equipment on a well-site in White County, Arkansas while allegedly performing his duties as an employee of Eagle Precision Productions, LLC;

WHEREAS, Parkison believes that certain equipment on the well-site may have been delivered to the well-site by one or more of the Debtors;

WHEREAS, Parkison has filed a complaint (the “**Complaint**”) in the Circuit Court of White County, Arkansas, Case No. CV-2011-95-1, which was subsequently removed to the United States District Court for the Eastern District of Arkansas (the “**Arkansas Court**”), Case No. 4:11-cv-265-DPM. The Complaint alleges, among other things, that Parkison has incurred injuries as a result of the Accident;

WHEREAS, on July 8, 2011, the Arkansas Court entered an order dismissing the Complaint because of the automatic stay imposed by the Debtors’ bankruptcy cases. That order provided that Parkison may move to amend and reassert the claims in the Complaint should the Court order relief from the automatic stay;¹

WHEREAS, on or about October 26, 2011, counsel for Parkison contacted counsel for the Reorganized Debtors seeking relief from the Automatic Stay to pursue the claims in the Complaint, and any non-bankruptcy remedies Parkison may have against the Reorganized Debtors, in the Arkansas Court; and

¹ The Arkansas Court’s order dismissing the Complaint is at Docket No. 19. That order states: “Parkison’s claims against the [Debtors] run afoul of the automatic stay because those companies are in bankruptcy. Those claims are therefore dismissed without prejudice for lack of subject matter jurisdiction. Parkison may move to amend and reassert those claims if he succeeds in getting relief from the stay in the bankruptcy court.”

WHEREAS, in light of the foregoing, the Reorganized Debtors and Parkison entered into this Agreed Stipulation and Order for the purposes of confirming the termination of the Automatic Stay.

AGREED STIPULATION AND ORDER

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between Parkison and the Reorganized Debtors that:

1. The Automatic Stay is Modified. To the extent applicable, and/or necessary pursuant to the terms of the Plan and Confirmation Order, the Automatic Stay is modified to allow Parkison to pursue remedies against the Reorganized Debtors solely with respect to the Accident, and solely in the Arkansas Court. Parkison shall only satisfy any recovery or settlement relating to the Accident from the proceeds of any applicable insurance policies covering the Accident, and shall waive any and all Claims (as defined in the Plan) against the Debtors, the Reorganized Debtors, or their respective estates.
2. No Admission of Liability. Nothing contained herein shall be construed as an admission of liability by the Reorganized Debtors, the Debtors, any party involved in or related to the Accident, and/or any applicable insurance provider.
3. Reservation of Rights. All of the rights, privileges and defenses, including but not limited to the rights to tender or receive indemnification from other parties, of the Reorganized Debtors, the Debtors, Parkison, and/or any party involved in or related to the Accident, and any applicable insurance provider are expressly preserved.
4. No Waiver, Amendment or Modification of Plan or Confirmation Order. Nothing contained herein shall be deemed a waiver, amendment, or modification of any provision in the Plan or Confirmation Order.

5. Drafting and Construction. Parkison and the Reorganized Debtors acknowledge that this Agreed Stipulation and Order is their joint work product, and that, accordingly, in the event of ambiguities, no inferences shall be drawn against either Parkison or the Reorganized Debtors on the basis of authorship of this Agreed Stipulation and Order.

6. 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.

7. Retention of Jurisdiction. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or relating to the implementation, interpretation, and/or enforcement of this Agreed Stipulation and Order. The parties to this Stipulation agree to execute any and all other documents required by the Arkansas Court to effectuate the terms of this Agreed Stipulation and Order.

8. Binding Effect. This Agreed Stipulation and Order shall be binding on Parkison and the Reorganized Debtors 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/ Kimberly A. Bartley
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Counsel for the Reorganized Debtors

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

Dated: Houston, Texas
November ____, 2011

HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE