



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed December 5, 2016


United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: § Chapter 11
ERICKSON INCORPORATED, *et al.*,¹ § Case No. 16-34393-hdh
Debtors. § (Jointly Administered)

INTERIM ORDER UNDER 11 U.S.C. §§ 105(a) AND 366 (I) PROHIBITING UTILITY COMPANIES FROM ALTERING OR DISCONTINUING SERVICE ON ACCOUNT OF PREPETITION INVOICES, (II) APPROVING DEPOSIT ACCOUNT AS ADEQUATE ASSURANCE OF PAYMENT, AND (III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS BY UTILITY COMPANIES FOR ADDITIONAL ASSURANCE OF PAYMENT
[Related to Docket No. 13]

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Erickson Incorporated (7561); EAC Acquisition Corporation (3733); Erickson Helicopters, Inc. (5052); Erickson Transport, Inc. (9162); Evergreen Helicopters International, Inc. (1311); Evergreen Equity, Inc. (9209); and Evergreen Unmanned Systems, Inc. (3961). The location of the Debtors' service address is 5550 SW Macadam Avenue, Suite 200, Portland, OR 97239.



On December 1, 2016, the Court conducted a hearing to consider the *Debtors'* *Emergency Motion for Interim and Final Orders Under 11 U.S.C. §§ 105(a) and 366 (I) Prohibiting Utility Companies From Altering or Discontinuing Service on Account of Prepetition Invoices, (II) Approving Deposit Account as Adequate Assurance of Payment, and (III) Establishing Procedures for Resolving Requests by Utility Companies for Additional Assurance of Payment* (the “**Motion**”), filed by the above-captioned Debtors (the “**Debtors**”). The Court finds that: (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors; (iv) due and proper notice of the Motion has been provided to (a) the Office of the United States Trustee; (b) the holders of the 20 largest unsecured claims against Erickson Incorporated and Erickson Helicopters, Inc.;² (c) Randall Klein, Goldberg Kohn, Ltd., 55 East Monroe Street, Suite 3300, Chicago, Illinois 60603-5792, lead counsel for Wells Fargo Bank, N.A., as DIP Revolving Agent and Existing First Lien Agent; (d) David Weitman, K&L Gates LLP, 1717 Main Street, Suite 2800, Dallas, Texas 75201, local counsel for Wells Fargo Bank, N.A., as DIP Revolving Agent and Existing First Lien Agent; (e) Scott L. Alberino, Akin Gump Strauss Hauer & Feld LLP, 1333 New Hampshire Avenue, N.W., Washington, DC 20036-1564, counsel for an ad hoc group of holders of 8.25% Second Priority Senior Secured Promissory Notes due 2020; (f) Edward M. Fox, Esq., Seyfarth Shaw LLP, 620 8th Avenue, New York, NY 10018, counsel to Wilmington Trust, National Association, as indenture trustee and notes collateral agent for the 8.25% Second Priority Senior Secured Promissory Notes due 2020; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; and (i) and the Utility Companies³

² Erickson Incorporated and Erickson Helicopters, Inc. are the only Debtors with holders of unsecured claims.

³ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

listed on Exhibit A to the Motion; and it appearing that no other or further notice need be provided; and (v) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein.

Therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as provided herein.
2. Except in accordance with the procedures set forth below, absent further order of the Court, each Utility Company is prohibited from (a) altering, refusing, or discontinuing service to, or discriminating against the Debtors solely on the basis of the commencement of the Chapter 11 Cases or on account of any unpaid invoice for services provided before the Petition Date and (b) requiring the payment of a deposit or other security in connection with the Utility Companies' continued provision of Utility Services, other than the establishment of the Utility Deposit Account.
3. The Debtors are authorized and directed to establish the Utility Deposit Account and shall deposit \$100,000 into the Utility Deposit Account for the purpose of providing Utility Companies adequate assurance of payment for postpetition Utility Services provided to the Debtors. The Debtors shall maintain the Utility Deposit Account with a minimum balance equal to 50% of the Debtors' estimated monthly cost of Utility Services, which the Debtors may adjust to account for the termination of Utility Services by the Debtors or other arrangements with respect to adequate assurance of payment reached with any Utility Company.
4. To the extent the Debtors become delinquent with respect to a Utility Company's account, such Utility Company shall file a Delinquency Notice with the Court and serve such Delinquency Notice on (a) the Debtors, (b) counsel to the Debtors, (c) lead counsel and local

counsel to Wells Fargo Bank, National Association, as DIP Revolving Agent and Existing First Lien Agent, (d) counsel to the official committee of unsecured creditors, if one is appointed, (e) counsel for an ad hoc group of holders of 8.25% Second Priority Senior Secured Promissory Notes due 2020, (f) counsel to the indenture trustee and notes collateral agent for the 8.25% Second Priority Senior Secured Promissory Notes due 2020, and (g) the United States Trustee for the Northern District of Texas (each, a “**Party in Interest**”). If the Debtors have not cured such delinquency or no Party in Interest has objected to the Delinquency Notice within ten (10) days of the receipt of the Delinquency Notice, then the Debtors will (i) remit to such Utility Company from the Utility Deposit Account the lesser of (a) the amount allocated in the Utility Deposit Account for such Utility Company’s account and (b) the amount of postpetition charges claimed as delinquent in the Delinquency Notice, and (ii) replenish the Utility Deposit Account for the amount remitted to such Utility Company.

5. The following procedures are hereby approved:

- (a) If a Utility Company is not satisfied with the assurance of future payment provided by the Debtors, the Utility Company must file and serve an objection setting forth: (i) the location(s) for which Utility Services are provided; (ii) the account number(s) for such location(s); (iii) the outstanding balance for each account; (iv) the amount of any deposit(s) made by the Debtors prior to the Petition Date; (v) a summary of the Debtors’ payment history in each account; and (vi) any argument as to why the Utility Company has not been provided adequate assurance of payment (an “**Objection**”).
- (b) The Court has scheduled a final hearing on the Motion on January 4, 2017 at 9:00 a.m. (Central) (the “**Hearing Date**”) before the Honorable Harlan D. Hale, United States Bankruptcy Judge, located at the Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom No. 3, Dallas, Texas 75242 for the purpose of considering any Objections;
- (c) Any Objection by a Utility Company listed on Exhibit A to the Motion must be served upon, and actually received by, (i) the Debtors’ counsel, Haynes and Boone, LLP, 1221 McKinney Street, Suite 2100, Houston, Texas 77010, Attn: Kourtney Lyda; 2323 Victory Avenue, Suite 700, Dallas, Texas 75219, Attn: Ian T. Peck; (ii) Randall Klein, Goldberg Kohn, Ltd., 55 East Monroe Street, Suite 3300, Chicago, Illinois 60603-5792, lead counsel for Wells Fargo Bank, N.A., as

DIP Revolving Agent and Existing First Lien Agent; (iii) David Weitman, K&L Gates LLP, 1717 Main Street, Suite 2800, Dallas, Texas 75201, local counsel for Wells Fargo Bank, N.A., as DIP Revolving Agent and Existing First Lien Agent; (iv) Scott L. Alberino, Akin Gump Strauss Hauer & Feld LLP, 1333 New Hampshire Avenue, N.W., Washington, DC 20036-1564, counsel for an ad hoc group of holders of 8.25% Second Priority Senior Secured Promissory Notes due 2020; (v) Edward M. Fox, Esq., Seyfarth Shaw LLP, 620 8th Avenue, New York, NY 10018, counsel to Wilmington Trust, National Association, as indenture trustee and notes collateral agent for the 8.25% Second Priority Senior Secured Promissory Notes due 2020; (vi) counsel to the official committee of unsecured creditors, if one is appointed; and (vii) the United States Trustee for the Northern District of Texas, by no later than seven (7) days prior to the Hearing Date. The Debtors may file and serve a reply to any such Objection on or before the date that is two (2) days prior to the Hearing Date.

- (d) Without further order of the Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Company, whether or not such Utility Company has filed an Objection, if the Debtors in their discretion determine that there is a reasonable basis for providing such additional adequate assurance.
- (e) If the Debtors discover the existence of a Utility Company not listed on Exhibit A to the Motion, the Debtors shall, within two (2) business days after discovering the existence of such Utility Company, (i) file a supplement to Exhibit A to the Motion which supplement shall identify for each Utility Company the additional amount of the adequate assurance deposit the Debtors propose to place in the Utility Deposit Account, and (ii) serve such Utility Company with notice of entry and a copy of this Interim Order.
- (f) In the event that a Utility Company not listed on Exhibit A to the Motion objects to the Debtors' proposal to provide adequate assurance of payment, such Utility Company must file and serve on counsel for the Debtors an Objection within fourteen (14) days after the date upon which it receives notice of entry of the Interim Order. A hearing on such Objection will be set by the Court no sooner than seven (7) days after the date upon which such Objection has been filed. The Debtors may file and serve a reply to any such Objection on or before the date that is two (2) days prior to such hearing date.
- (g) All Utility Companies will be deemed to have received adequate assurance of payment in accordance with Bankruptcy Code Section 366, without the need for an additional deposit or other security, until this Court enters an order to the contrary. Any Utility Company that fails to make a timely Objection shall be deemed to be satisfied that the Utility Deposit Account provides adequate assurance of payment for future services within the meaning of Bankruptcy Code Section 366(c)(2).

6. In the event that no timely Objections are filed, this Interim Order shall be deemed a Final Order and immediately effective as a Final Order, without further notice or hearing on the Motion.

7. The Debtors shall serve this Interim Order upon each of the Utility Companies listed on Exhibit A to the Motion, at the addresses listed thereon, by first-class mail, postage prepaid, promptly after the entry of this Order.

8. The inclusion or exclusion of any entity on or from Exhibit A to the Motion or on or from any amended Exhibit A shall not constitute an admission that such entity is or is not a “utility” within the meaning of Bankruptcy Code Section 366. This Order specifically reserves the Debtors’ rights to argue that (a) any of the entities listed on Exhibit A to the Motion or any amended Exhibit A is not a “utility” within the meaning of Bankruptcy Code Section 366, and (b) any such entity is compelled by contractual obligation, federal, state or local law, or otherwise, to continue to furnish services to the Debtors notwithstanding the Debtors’ filing of the Chapter 11 Cases.

9. Nothing in this Order or the Motion shall be deemed to vacate or modify any other restrictions on the termination of service by a Utility Company as provided by Bankruptcy Code Sections 362 and 365 or other applicable law, and nothing herein or in the Motion shall constitute postpetition assumption or adoption of any agreement pursuant to Bankruptcy Code Section 365. Nothing in this Order shall be deemed a waiver by the Debtors or any other party of any right with respect to the assumption or rejection of an executory contract.

10. The Debtors are authorized to pay on a timely basis in accordance with their prepetition practices all undisputed invoices in respect of prepetition and postpetition Utility Services rendered by the Utility Companies to the Debtors.

11. Notwithstanding anything to the contrary herein, any payments made or to be made under this Interim Order or a Final Order with respect to such claims shall be subject to the terms, conditions, limitations, and requirements of the financing orders entered in the Chapter 11 Cases (together with any approved budgets in connection therewith, the “*DIP Orders*”) in favor of Wells Fargo Bank, N.A., as agent (the “*DIP Revolving Agent*”) under the first lien super-priority revolving credit facility (the “*DIP Revolving Facility*”), and Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent (the “*DIP Term Agent*,” together with the DIP Revolving Agent, the “*DIP Agents*”) under the second lien super-priority term loan facility (the “*DIP Term Facility*,” together with the DIP Revolving Facility, the “*DIP Facility*”). The Utility Deposit Accounts shall be subject to the liens and protections in the DIP Orders. Any outstanding balances therefrom shall be treated in accordance with the terms of any confirmed plan of reorganization.

12. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

13. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

END OF ORDER

Submitted by:

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PROPOSED ATTORNEYS FOR DEBTORS