

Kenric D. Kattner
State Bar No. 11108400
Kourtney Lyda
State Bar No. 24013330
HAYNES AND BOONE, LLP
1221 McKinney Street, Suite 2100
Houston, TX 77010
Telephone: 713.547.2000
Facsimile: 713.547.2600
Email: kenric.kattner@haynesboone.com
Email: kourtney.lyda@haynesboone.com

Ian T. Peck
State Bar No. 24013306
David Staab
State Bar No. 24093194
HAYNES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, TX 75219
Telephone: 214.651.5000
Facsimile: 214.651.5940
Email: ian.peck@haynesboone.com
Email: david.staab@haynesboone.com

PROPOSED ATTORNEYS FOR DEBTORS

**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. § **(Joint Administration Requested)**
§

**DEBTORS’ EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
PURSUANT TO 11 U.S.C. §§ 105(a), 362, 363(b), 363(c), 1107(a) AND 1108 and FED. R.
BANKR. P 6003 AND 6004 (I) AUTHORIZING DEBTORS TO PAY PREPETITION
OBLIGATIONS OWED TO FOREIGN CREDITORS, (II) ENFORCING THE
PROTECTIONS OF THE AUTOMATIC STAY, (III) AUTHORIZING AND DIRECTING
FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND
TRANSFERS, AND (IV) SCHEDULING FINAL HEARING**

Erickson Incorporated and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), file the *Debtors’ Emergency Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105(a), 362, 363(b), 363(c),*

¹ The Debtors in the 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.



1107(a), and 1108 and FED. R. BANK. P. 6003(b) and 6004(h) (I) Authorizing Debtors To Pay Prepetition Obligations Owed to Foreign Creditors, (II) Enforcing the Protections of the Automatic Stay, (III) Authorizing And Directing Financial Institutions to Honor And Process Related Checks And Transfers, (IV) Scheduling Final Hearing (this “**Motion**”), and respectfully represent:

Jurisdiction

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

Background

2. The Debtors, together with their non-debtor affiliates (collectively, “**Erickson**”), are a vertically-integrated manufacturer and operator of the powerful heavy-lift Erickson S-64 Airplane helicopter (the “**Airplane**”), and are a leading global provider of aviation services. Erickson currently possesses a diverse fleet of 69 rotary-wing and fixed-wing aircraft that support a variety of government and civil customers worldwide. These customers rely on Erickson for a broad range of aerial services, including critical supply and logistics for deployed military forces, humanitarian relief, firefighting, timber harvesting, infrastructure construction, and crewing.

3. Included among Erickson’s fleet are 20 Airplanes, for which Erickson owns the Type and Production Certificates. Erickson manufactures the Airplanes and related components for sale to government and commercial customers. Erickson also provides aftermarket support and maintenance, repair, and overhaul services for the Airplanes and other aircraft.

4. To facilitate a further restructuring of the Debtors’ businesses, on the date hereof (the “**Petition Date**”), each of the Debtors commenced cases (the “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and

1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of the Chapter 11 Cases. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases, and no committees have been appointed or designated.

5. Additional information about Erickson's businesses, capital structure, and the circumstances leading to the commencement of the Chapter 11 Cases can be found in the *Declaration of David Lancelot in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "**Lancelot Declaration**"), filed concurrently herewith.

Relief Requested

6. By this Motion, the Debtors request entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the "**Interim Order**" and the "**Final Order**," respectively), pursuant to sections 105(a), 362, 363(b), 363(c), 1107(a), and 1108 of the Bankruptcy Code (a) authorizing, but not directing, the Debtors to pay, in their sole discretion and in the ordinary course of business, the prepetition claims (the "**Foreign Claims**") owing to Foreign Creditors (as hereinafter defined) either directly or through their Foreign Affiliates (as hereinafter defined), (b) enforcing the protections of the automatic stay, (c) authorizing and directing the Debtors' banks to receive, process, honor, and pay, to the extent of funds on deposit, checks or electronic transfers used by the Debtors to pay the Foreign Claims without further order of the Court, subject to the terms and conditions set forth in the Order attached hereto, and (d) scheduling a final hearing (the "**Final Hearing**") to consider entry of a Final Order.

Basis for Relief

I. The Debtors' Foreign Creditors

7. As a provider of air transportation services to a mix of commercial and government customers, Erickson operates in countries throughout the world. A significant portion of Erickson's

annual flight operations involve origins or destinations outside the United States as a result of their business with the United States government (the “**U.S. Government**”). By this Motion, the Debtors are requesting authority to pay the Foreign Creditors (as defined below) with which they do business directly, and are not requesting authority to directly pay the vendors of any of the Foreign Affiliates.²

8. In the ordinary course of conducting their business, the Debtors incur various obligations to numerous foreign vendors, service providers, independent contractors, landlords and other entities (collectively, the “**Foreign Vendors**”), as well as to various governmental and quasi-governmental authorities, and private concessionaires for the operation of public services and facilities, including, without limitation, foreign, provincial, municipal, or other authorities (collectively, the “**Foreign Authorities**,” and together with the Foreign Vendors, the “**Foreign Creditors**”). The Debtors rely on these Foreign Creditors to supply various goods, services, permits, licenses, and rights to the Debtors, as discussed in more detail below. The majority of Foreign Creditors are paid by the Foreign Affiliates; however, approximately twenty percent of the Foreign Creditors are paid directly by the Debtors. The Foreign Creditors paid directly by the Debtors include those vendors located in countries in which the Debtors do not have a Foreign Affiliate. The Debtors are requesting authority, but not direction, to pay the Foreign Creditors..

A. Foreign Authorities

9. One important aspect of Erickson’s international operations is its ability to operate in the airspace in foreign countries. Erickson is required to remain current on its payment obligations

² Some of Erickson’s operations are conducted through non-Debtor affiliates, incorporated in various foreign jurisdictions. The Debtors currently have affiliated entities located in Turkey (Erickson Aviation Turkey), Canada (Canada Air-Crane Ltd), India (Erickson Support Services Private Limited), Peru (Erickson Aviation Peru S.A.C.), Brazil (Air Amazonia Ltda.), Malaysia (Erickson Air-Crane Malaysia), Uganda (Erickson Equitorial Aviation Limited), Italy (European Air-Crane), and Trinidad (Evergreen Helicopters International)(each a “Foreign Affiliate” and collectively, the “Foreign Affiliates”).

to Foreign Authorities and other Foreign Creditors to, among other things, access airspace, operate within their air traffic control systems, and obtain required inventory for their maintenance operations (“**Foreign Authority Fees**”). The Debtors may be assessed customs duties and excise taxes, general sales taxes, fuel taxes, and other types of taxes (collectively, the “**Foreign Taxes**”). The Debtors are obligated to timely collect, withhold, incur, and remit Foreign Taxes to the applicable Foreign Authorities. Most of Erickson’s obligations to Foreign Authorities are paid by their foreign non-Debtor affiliates; however, the Debtors may, on occasion, may directly incur a tax or fee related to their operations in a foreign country. Nonpayment of Foreign Authority Fees and Foreign Taxes may cause Foreign Authorities to take precipitous action that could disrupt the Debtors’ operations and potentially impose significant additional and unnecessary costs to the Debtors’ estates.

B. Maintenance and Inspection Services

10. Erickson relies on Foreign Vendors to service and maintain certain aircraft at foreign maintenance facilities. While Erickson maintains a certain amount of spare parts in its “fly away kits” stored within the aircraft, it is logistically impossible to maintain a full inventory of every part that may be needed to allow aircraft to continue in operations safely and continuously. As such, circumstances often arise when the “fly away kit” will not have the necessary parts and the Debtors must obtain the part from an international maintenance provider. The Debtors have developed a network of suppliers in various foreign locations that have necessary parts in stock or are able to obtain the parts in an expedited fashion. Requiring the Debtors to locate substitute suppliers in and around these locations would require a massive effort and the incurrence of substantial monetary costs.

11. Erickson also relies on Foreign Creditors to provide other services, including aircraft inspection and security-related services. The Debtors are subject to regulations imposed by the Federal Aviation Administration (the “FAA”) and certain foreign regulatory authorities for aircraft safety and sanitation. As such, the Debtors must utilize Foreign Vendors to inspect their aircraft regularly and to verify compliance with FAA obligations.

C. Flight Communications and Data

12. To sustain their complex international flight operations, Erickson requires timely communication with their aircraft and access to critical data, including air traffic, weather patterns, and other information affecting the ability to safely and effectively navigate their aircraft. The Debtors use several Foreign Vendors to provide these services that could not be easily replaced without significant costs and delay.

II. Continued Foreign Operations

13. As previously stated, the Debtors’ foreign operations are an essential element of their operations. The global scope of the Debtors’ business is a key source of revenue and a major factor in the overall reputation of the Debtors and the loyalty of their customers, especially the U.S. Government. To preserve the value of the Debtors’ assets and operations, the Debtors must have the ability to continue to fund and maintain their international operations on an uninterrupted basis. Because of the nature of the Debtors’ business and the customers to which they provide service, it would be impossible for the Debtors to attempt to substantially change their foreign operations.

14. Many of the Foreign Creditors have little or no connection to the United States. Although the scope of the automatic stay set forth in section 362 of the Bankruptcy Code is global, the Court is well aware of the difficulty (if not impossibility) of enforcing the stay in foreign jurisdictions if the creditor to which enforcement is sought has no presence in the United States. As a result, despite the commencement of the Chapter 11 Cases and the imposition of the automatic

stay, the Foreign Creditors likely would be able to immediately pursue remedies and seek to collect prepetition amounts owed to them. Indeed, there is the real risk that Foreign Creditors may attach or seize the Debtors' assets in their jurisdictions even before obtaining a judgment— which would significantly disrupt operations. Additionally, in the absence of payment of their Foreign Claims, there is a distinct risk that certain Foreign Creditors may refuse to provide necessary goods and services, or allow access to foreign airspace, thereby jeopardizing the Debtors' ability to sustain international operations.

15. As of the Petition Date, the Debtors estimate that they owe Foreign Creditors approximately \$3.0 million.³ Due to the varying nature of billing cycles associated with Foreign Creditors, especially some of the smaller creditors in remote locations, the Debtors often must wait months before they are invoiced. As a result, it is difficult, if not impossible, to calculate the actual outstanding amount owed to Foreign Creditors as of the Petition Date. Therefore, the Debtors seek authority to pay all Foreign Claims, to the extent necessary, and as they come due.

16. While the Debtors recognize that their ability to enforce the automatic stay is difficult, to the extent possible, the Debtors propose in connection with the payment of the Foreign Claims (unless otherwise waived by the Debtors in their discretion), that in exchange for payment of their prepetition Foreign Claims, the Foreign Creditors continue to provide goods and services to the Debtors on the most favorable terms in effect between the Foreign Creditor and the Debtors in the twelve (12) month period preceding the Petition Date or on such other terms as the Debtors and the Foreign Creditor may otherwise agree (the “**Customary Trade Terms**”). The Debtors propose that the Customary Trade Terms apply for the balance of the term of the Foreign Creditor's agreement

³ The Debtors concurrently herewith are filing separate motions seeking authority to pay, among other things, the prepetition claims of certain critical vendors, lien claimants, taxing authorities, utilities, and other service providers (collectively, the “**Contemporaneous Motions**”). Although the Debtors have endeavored to provide accurate figures and calculations herein, there may, in some instances, be overlap between the amounts sought to be expended in this Motion and the Contemporaneous Motions.

with the Debtors; *provided, however*, that the Debtors pay for the goods and services in accordance with the payment terms provided in the agreement. If any Foreign Creditor is paid its prepetition Foreign Claim and thereafter does not continue to provide goods, services, or other items to the Debtors on Customary Trade Terms, any payments made will be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and will be recoverable by the Debtors in cash upon written request. Upon recovery by the Debtors, the Foreign Claims will be reinstated as a prepetition claim in the amount recovered. The Debtors also seek authorization, but shall not be obligated, to obtain written verification, before issuing payment to a Foreign Creditor, that the Foreign Creditor will continue to provide goods and services to the Debtors on Customary Trade Terms as described above; *provided, however*, that the absence of written verification will not limit the Debtors' rights and relief sought herein.

Supporting Authority

I. Ample Authority Exists to Support Payment of the Foreign Claims

17. Courts generally acknowledge that it is appropriate to authorize the payment (or other special treatment) of prepetition obligations in appropriate circumstances. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174-75 (Bankr. S.D.N.Y. 1989) (granting authority to pay prepetition wages); *see also Armstrong World Indus., Inc. v. James A. Phillips, Inc., (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (granting authority to pay prepetition claims of suppliers who were potential lien claimants). As set forth herein, in authorizing payments of certain prepetition obligations, courts have relied on several legal theories, rooted in sections 105(a), 363(b), 363(c), 1107(a), and 1108 of the Bankruptcy Code.

a. The Court May Allow Payment of Certain of the Foreign Claims Under Sections 363, 1107(a) and 1108 of the Bankruptcy Code

18. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor in possession to continue to operate its business. Further, section 363(c) of the Bankruptcy Code authorizes a debtor in possession operating its business pursuant to section 1108 of the Bankruptcy Code to use property of the estate in the ordinary course of business without notice or a hearing. The Debtors submit that continuing, renewing, replacing, initiating, and/or terminating the relationships with the Foreign Vendors is in the ordinary course of business is permitted by sections 363(c), 1107(a) and 1108 of the Bankruptcy Code without further application to the Court.

19. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the fiduciary duties of any debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” *Id.* Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate” *Id.*

20. Consistent with a debtor’s fiduciary duties, courts have also authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See, e.g., Ionosphere Clubs*, 98 B.R. at 175 (discussing prior order authorizing payment of prepetition wage claims pursuant to section 363(b) of the Bankruptcy Code; relief appropriate where payment was needed to “preserve and protect its business and ultimately

reorganize, retain its currently working employees and maintain positive employee morale.”); *see also Armstrong*, 29 B.R. at 397 (relying on section 363 of the Bankruptcy Code to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors). Specifically, the business judgment standard requires that a debtor “articulate some business justification, other than mere appeasement of major creditors.” *Ionosphere Clubs*, 98 B.R. at 175.

21. The Debtors submit that the foregoing demonstrates the substantial benefits that will inure to its estates and creditors as a result of the Debtors honoring, maintaining and continuing its existing relationships with the Foreign Vendors during the postpetition period and honoring and satisfying the prepetition obligations owed to the Foreign Vendors. Accordingly, entry of an order authorizing the Debtors to honor their existing relationships with the Foreign Vendors is necessary and appropriate to maintain the Debtors’ going concern value.

b. The Relief Requested is Supported by the Doctrine of Necessity

22. Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a), courts may permit preplan payments of prepetition obligations when such payments are essential to the continued operation of the debtor’s business and, in particular, where nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtors’ business reorganization plan. *See In re UNR Indus.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtors’ successful reorganization); *Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers

bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor.)

23. Moreover, it is well established by case law that, under certain circumstances, a debtor may make pay certain prepetition claims in the performance of the debtor's fiduciary duty to preserve the estate and the business's going-concern value. *See, e.g., Miltenberger v. Logansport Ry.*, 106 U.S. 286, 312 (1882) (payment of pre-receivership claim prior to reorganization permitted to prevent "stoppage of . . . [crucial] business relations"); *In re CoServ*, 273 B.R. at 497 (noting that "it is only logical that the bankruptcy court be able to use section 105(a) of the Code to authorize satisfaction of a prepetition claim in aid of preservation or enhancement of the estate").

24. The rationale for the necessity of payment rule—the rehabilitation of a debtor in reorganization cases—is "the paramount policy and goal of Chapter 11." *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176; *see also Burchinal v. Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that allowance of "unequal treatment of pre-petition debts when necessary for rehabilitation . . ." is appropriate); *In re Just For Feet*, 242 B.R. 821, 826 (Bankr. D. Del 1999) (finding that payment of prepetition claims to certain trade vendors was "essential to the survival of the debtor during the chapter 11 reorganization"); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) ("[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code", but "[a] general practice has developed ... where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment"); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as "necessary to avert a serious threat to the Chapter 11 process"); *Burchinal v. Cent. Wash. Bank (In re Adams*

Apple, Inc.), 829 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that allowance of “unequal treatment of pre-petition debts when necessary for rehabilitation . . .” is appropriate); COLLIER ON BANKRUPTCY P 105.02[4][a] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev.) (discussing cases in which courts have relied on the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

25. Courts have granted relief similar to that requested herein in international airline restructuring cases. *See, e.g., In re AMR Corp.*, Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Nov. 29, 2011) (authorizing payment of all claims necessary to foreign creditors up to an estimated \$355 million); *In re Frontier Airlines, Inc.*, Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. Apr. 14, 2008) (authorizing payment of approximately \$7 million per month of prepetition obligations to foreign creditors); *In re US Airways Group, Inc.*, Case No. 04-13819 (SMM) (Bankr. E.D. Va. Sept. 12, 2004) (authorizing payment of approximately \$25 million per month of prepetition obligations to foreign creditors); *In re UAL Corp.*, Case No. 02 48191 (ERW) (Bankr. N.D. Ill. Dec. 9, 2002) (authorizing payment of \$35 million of prepetition obligations to foreign creditors); *In re US Airways Group, Inc.*, Case No. 02-83984 (SSM) (Bankr. E.D. Va. Aug. 11, 2002) (authorizing payment of approximately \$15 million per month of prepetition obligations to foreign creditors).

26. The relief requested herein is appropriate and warranted under each of the above-described standards. As illustrated above, failure to satisfy the obligations of certain Foreign Creditors could have a devastating effect on the Debtors’ efforts to reorganize.

II. The Court May Allow Payment of Certain of the Foreign Claims Under Sections 503(b)(9) and 507(a)(8) of the Bankruptcy Code

27. Section 503(b)(9) of the Bankruptcy Code entitles many of the Foreign Creditors’ prepetition claims to priority treatment. The Debtors believe many of the Foreign Claims could be priority claims under section 503(b)(9) of the Bankruptcy Code. Under section 503(b)(9), claims for

the value of goods received by the Debtors in the ordinary course of their business during the 20-day period prior to the Petition Date are entitled to priority status. As priority claims, the Debtors are required to pay these claims in full to confirm a plan of reorganization. *See* 11 U.S.C. § 1129(a)(9)(A).

28. Although section 503(b)(9) of the Bankruptcy Code does not specify a time for payment of these expenses, bankruptcy courts have the discretion to authorize payments to priority claimants prior to confirmation if the debtor has the ability and there is a need to pay. Indeed, “arguably the debtor could pay its 503(b)(9) claimants without court approval.” *Dura Auto. Sys.*, No. 06-11202 (KJC) (Bankr. D. Del. Oct. 31, 2006) (approving payment of claims under section 503(b)(9) as part of “first day” relief). Courts in many district have exercised their discretion and have authorized the payment of prepetition claims under section 503(b)(9) of the Bankruptcy Code during a chapter 11 case. *See, e.g., The Brown Publishing Co.*, Case No. 10-73295 (DTE) (Bankr. E.D.N.Y. May 17, 2011); *In re Old TIC LLC*, Case No. 09-72669 (DTE) (Bankr. E.D.N.Y. Sept. 17, 2010); *In re Premier International Holdings, et al.*, Case No. 09-12019 (CSS) (Bankr. D. Del. June 13, 2009); *In re Champion Enterprises, Inc.*, Case No. 09-14019 (KG) (Bankr D. Del. November 17, 2009); *In re Linens Holding Co.*, Case No. 08-10832 (CSS) (Bankr. D. Del. May 28, 2008); *In re Sharper Image Corp.*, Case No. 08-10322 (KG) (Bankr. D. Del. Feb. 20, 2008); *In re Buffets Holdings, Inc.*, Case No. 08-10141 (MFW) (Bankr D. Del. Feb. 13, 2008); *In re New York Home Health Care Equip. LLC*, Case No. 08-73863 (DTE) (Bankr. E.D.N.Y. Aug. 27, 2008).

29. Further, some of the Foreign Claims may be priority claims under section 507(a)(8) of the Bankruptcy Code, which provides that certain unsecured claims of domestic and foreign governmental units are entitled to priority. As priority claims, the Debtors would be required to pay these claims in full before making any distributions to holders of general unsecured claims in

connection with a chapter 11 plan. Regardless of the possible application of sections 503(b)(9) and 507(a)(8) of the Bankruptcy Code, however, the risks associated with non-payment of Foreign Creditors justifies the payment of the Foreign Claims in the ordinary course of business.

III. Application of the Automatic Stay and Related Provisions Applied Worldwide

30. Bankruptcy courts uniformly recognize that the automatic stay under section 362 of the Bankruptcy Code applies extraterritorially (i.e., against foreign entities in foreign locations). *See In re Nortel Networks Corp.*, 2010 WL 1172642, at *2 (Bankr. D. Del. Mar. 18, 2010) (“[T]he risk of foreign creditors seeking to seize debtors’ assets abroad . . . is what the automatic stay protects against when debtors are vigilant and bankruptcy courts are prepared to enforce the fundamental protection of the automatic stay.”).

31. Notwithstanding the self-executing and global nature of sections 362, 365, 525 and 541 of the Bankruptcy Code, not all parties affected or potentially affected by the commencement of the Chapter 11 Cases are aware of these statutory provisions or their significance and impact. Debtors often must advise third parties of the existence, reach, and effects of these sections of the Bankruptcy Code, especially – as is the case here – where the debtor’s businesses and operations are international. In certain circumstances, a Chapter 11 debtor is forced to initiate proceedings in the bankruptcy court to enforce these protections. To avoid such unnecessary actions, and in an effort to provide notice to parties unfamiliar with the Bankruptcy Code of the existence, scope, and effect of these provisions, it is prudent to obtain an order confirming and reinforcing the relevant sections of the Bankruptcy Code.

32. Section 365(e)(1) of the Bankruptcy Code renders insolvency termination provisions in contracts unenforceable against a Chapter 11 debtor. Specifically, Section 365(e)(1) provides that:

Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract

or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on—

- (A) the insolvency or financial condition of the debtor at any time before the closing of the case;
- (B) the commencement of a case under this title; or
- (C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

11 U.S.C. § 365(e)(1).

33. Bankruptcy courts have applied section 365(e)(1) of the Bankruptcy Code liberally, such that provisions modifying or terminating the relationships of the contracting parties due to the filing of a bankruptcy case are “broadly unenforceable.” *In re AMR Corp.*, 730 F.3d 88, 106 (2d Cir. 2013) (citing *In re Lehman Bros. Holdings Inc.*, 422 B.R. 407, 414 (Bankr. S.D.N.Y. 2010)); *see also In re Mirant Corp.*, 440 F.3d 238, 245 (5th Cir. 2006) (“[g]enerally, § 365(e) of the Code bars the enforcement of ipso facto clauses in executory contracts”); *Mims v. Fid. Funding, Inc.*, 307 B.R. 849, 858 (N.D. Tex. 2002) (“[C]lauses that terminate or modify a debtor’s rights in an executory contract upon the filing of a bankruptcy petition are generally rendered unenforceable and are known as *ipso facto* clauses”) (internal citation omitted).

34. Similarly, all interests of a debtor in property held as of the commencement of a Chapter 11 case become property of the estate and provisions in agreements, transfer instruments, or applicable nonbankruptcy law are unenforceable if any such provision “restricts or conditions transfer of such interest by the debtor” or if any such provision:

is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement, and [such provision] effects or gives an option to effect a forfeiture, modification, or termination of the debtor’s interest in property.

11 U.S.C. § 541(c)(1).

35. Pursuant to section 525 of the Bankruptcy Code, a foreign or domestic governmental unit⁴ may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, debtors or debtors' affiliates on account of (i) the commencement of Chapter 11 cases, (ii) the debtors' insolvency, or (iii) the fact that the debtors have not paid a debt that is dischargeable in Chapter 11 cases. *See* 11 U.S.C. § 525.

36. Notwithstanding the applicability of the stay, the Foreign Creditors may not be familiar with United States bankruptcy law or may not have operations or assets within the United States that would be subject to the jurisdiction of this Court and available to satisfy a judgment entered by this Court if such entities were to violate the automatic stay provisions of section 362 of the Bankruptcy Code. Accordingly, out of an abundance of caution, the Debtors request this Court's recognition of the applicability of automatic stay worldwide and the prohibition of any attachment, arrest, seizure, or any other adverse action taken against the Debtors' aircraft or equipment.

37. Relief similar to that requested herein has previously been granted by courts in this district and others in other Chapter 11 cases. *See, e.g., In re CHC Group Ltd.*, Case No. 16-31854 (Bankr. N.D. Tex. May 7, 2016) (Docket No. 56); *In re Fibertower Network Serv. Corp.*, Case No. 12-44027 (Bankr. N.D. Tex. July 25, 2012) (Docket No. 76); *In re The Bombay Co., Inc.*, Case No. 07-44084 (Bankr. N.D. Tex. Sept. 25, 2007) (Docket No. 107); *In re Mirant Corp.*, Case No. 03-46590 (Bankr. N.D. Tex. July 17, 2003) (Docket No. 48).

⁴The Bankruptcy Code defines "governmental unit" as the "United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government." 11 U.S.C. § 101(27). Thus, the protections of Section 525 apply broadly to local, state, and foreign governmental units.

IV. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers

38. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations, 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 (1) Wells Fargo Bank, N.A., as agent (the "**DIP Revolving Agent**") under the proposed first lien super-priority revolving credit facility (the "**DIP Revolving Facility**"), and (2) Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent (the "**DIP Term Agent**") under the proposed second lien super-priority term loan facility (the "**DIP Term Facility**"). Also, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment made to Foreign Creditors. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that this Court should authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the relief requested herein, subject to the terms and conditions of the Order attached hereto.

39. Further, to the extent the Debtors intend to make a payment in excess of \$50,000 under this Order, such payment shall be subject to the consent of the Backstop Parties (as defined in the DIP Orders); provided, that if the Backstop Parties do not object in writing (including email) to the payment of such amounts within 48 hours of receiving notice (including email) from the Debtors, the Backstop Parties will be deemed to have consented.

Request for Waiver of Stay

40. To the extent that the relief sought in this Motion constitutes a use of property under Bankruptcy Code Section 363(b), the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). Further, to the extent applicable, the Debtors request that the Court find that the provisions of Bankruptcy Rule 6003 are satisfied. As explained herein, the relief requested in this Motion is immediately necessary for the Debtors to be able to continue to operate their business and preserve the value of the estates.

The Debtors' Reservation of Rights

41. Nothing contained herein is intended or should be construed as an admission as to the validity or priority of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim or an approval or assumption of any agreement, agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any claim. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity or priority of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

Notice

42. No trustee, examiner or creditors' committee has been appointed in the Chapter 11 Cases. Notice of this Motion will be provided to: (i) the Office of the United States Trustee; (ii) the holders of the 20 largest unsecured claims against Erickson Incorporated and Erickson Helicopters, Inc.;⁵ (iii) 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; (iv) 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

⁵ Erickson Incorporated and Erickson Helicopters, Inc. are the only Debtors with holders of unsecured claims.

Agent; (v) 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; (vi) 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; (vii) the Securities and Exchange Commission; and (viii) the Internal Revenue Service. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

No Prior Request

43. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, for the reasons set forth herein and the Lancelot Declaration, the Debtors respectfully request entry of the Interim Order and Final Order granting the relief requested herein and such other relief as may be appropriate under the circumstances.

RESPECTFULLY SUBMITTED this 9th day of November, 2016.

HAYNES AND BOONE, LLP

By: /s/ Kenric D. Kattner
Kenric D. Kattner
State Bar No. 11108400
Kourtney Lyda
State Bar No. 24013330
1221 McKinney Street, Suite 2100
Houston, TX 77010
Telephone: 713.547.2000
Facsimile: 713.547.2600
Email: kenric.kattner@haynesboone.com
Email: kourtney.lyda@haynesboone.com

and

Ian T. Peck
State Bar No. 24013306
David Staab
State Bar No. 24093194
2323 Victory Avenue, Suite 700
Dallas, TX 75219
Telephone: 214.651.5000
Facsimile: 214.651.5940
Email: ian.peck@haynesboone.com
Email: david.staab@haynesboone.com

PROPOSED ATTORNEYS FOR DEBTORS

CERTIFICATE OF CONFERENCE

I hereby certify that on or before November 8, 2016, the undersigned counsel for the Debtors conferred with and received comments to this Motion from (i) Randall Klein, Goldberg Kohn, Ltd., lead counsel for Wells Fargo Bank, N.A., as DIP Revolving Agent and Existing First Lien Agent, (ii) Scott L. Alberino and Brad M. Kahn, Akin Gump Strauss Hauer & Feld LLP, counsel for an ad hoc group of holders of 8.25% Second Priority Senior Secured Promissory Notes due 2020, and (iii) Edward M. Fox, Esq., Seyfarth Shaw LLP, 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.

I hereby also certify that on November 8, 2016, the undersigned counsel for the Debtors conferred regarding this Motion with the Office of the United States Trustee for the Northern District of Texas, which has not indicated whether it consents or objects to this Motion.

/s/ Ian T. Peck

Ian T. Peck

Exhibit A

Proposed Interim Order

**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.	§	(Joint Administration Requested)
	§	

**INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363(b), 363(c), 1107(a),
AND 1108 AND FED. R. BANKR. P. 6003(b) AND 6004(h) (I) AUTHORIZING
DEBTORS TO PAY PREPETITION OBLIGATIONS OWED TO FOREIGN
CREDITORS, (II) AUTHORIZING AND DIRECTING FINANCIAL
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND
TRANSFERS, AND (III) SCHEDULING FINAL HEARING**

Upon the motion (the “**Motion**”)² of the above-referenced Debtors (the “**Debtors**”) for entry of an interim order (this “**Order**”), pursuant to sections 105(a), 363(b), 363(c), 1107(a) and

¹ The Debtors in the 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.

1108 of title 11, United States Code (the “**Bankruptcy Code**”), for entry of an order (a) authorizing, but not directing, the Debtors to pay, in their sole discretion, any prepetition claims owing to Foreign Creditors, (b) authorizing and directing the Debtors’ banks to receive, process, honor, and pay, to the extent of funds on deposit, any prepetition checks drawn or fund transfer requests made for payment of claims owing to Foreign Creditors without further order of the Court, and (c) scheduling a final hearing (the “**Final Hearing**”), all as more fully described in this Motion and as set forth below; and the Court having jurisdiction to consider this Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of this Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. § 1408; and due and proper notice of this Motion being adequate and appropriate under the particular circumstances; and a hearing having been held to consider the relief requested in this Motion (the “**Hearing**”); and upon consideration of the Lancelot Declaration, the record of the Hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in this Motion (to the extent consistent with the terms set forth below) is in the best interests of the Debtors’ estates, their creditors, and other parties in interest, and that the legal and factual bases set forth in this Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. This Motion is granted on an interim basis as provided herein.
2. The Debtors are authorized, but not directed, to pay, in their sole discretion, as and when they become due, the Foreign Claims up to \$2.0 million.

² All capitalized terms used but otherwise not defined herein shall have the meanings set forth in this Motion.

3. Notwithstanding anything to the contrary herein, any payments made or to be made under this 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 (1) Wells Fargo Bank, N.A., as agent (the “**DIP Revolving Agent**”) under the proposed first lien super-priority revolving credit facility (the “**DIP Revolving Facility**”), and (2) Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent (the “**DIP Term Agent**”) under the proposed second lien super-priority term loan facility (the “**DIP Term Facility**”).

4. Any payment in excess of \$50,000 under this Order shall be subject to the consent of the Backstop Parties (as defined in the DIP Orders); provided, that if the Backstop Parties do not object in writing (including email) to the payment of such amounts within 48 hours of receiving notice (including email) from the Debtors, the Backstop Parties shall be deemed to have consented.

5. To the extent necessary, the Final Hearing on this Motion shall be held on _____, 2016 at ____:____ a.m./p.m. prevailing Central Time. Any objections to the relief requested in this Motion on a final basis must be filed no later than _____, 2016 at ____:____ p.m. (Central Time) (the “**Objection Deadline**”) and served on the following parties: (a) the Debtors, Erickson Incorporated, 5550 S.W. Macadam Avenue, Suite 200, Portland, Oregon 97239, Attn: Melissa Berube; (b) proposed counsel for the Debtors, Haynes and Boone, LLP, 1221 McKinney Street, Suite 2100, Houston, Texas 77010, Attn: Kourtney Lyda, Esq.; (c) the Office of the United States Trustee; (d) the holders of the 20 largest unsecured claims against Erickson Incorporated and Erickson Helicopters, Inc.;³ (e) Randall Klein, Goldberg Kohn, Ltd., 55 East Monroe Street, Suite 3300, Chicago, Illinois 60603-5792, lead counsel for Wells Fargo

³ Erickson Incorporated and Erickson Helicopters, Inc. are the only Debtors with holders of unsecured claims.

Bank, N.A., as DIP Revolving Agent and Existing First Lien Agent; (f) 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; (g) 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; (h) 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; and (i) counsel for the official unsecured creditors committee, if appointed.

6. If an objection is timely filed and served so as to be received on or before the Objection Deadline, such objection shall be set for the Final Hearing on _____, 2016 at ___:___ a.m./p.m. (Central Time). This Order, and all acts taken in furtherance of or reliance upon this Order, shall be effective notwithstanding the filing of an objection.

7. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtors, a waiver of the Debtors' rights to subsequently dispute such claim or the assumption or adoption of any agreement, contract or lease under section 365 of the Bankruptcy Code.

8. The Debtors' banks and other financial institutions (collectively, the "**Banks**") shall be and hereby are authorized and directed to receive, process, honor and pay all prepetition checks and electronic fund transfers that are authorized under this Order, provided that sufficient and cleared funds are on deposit in the applicable accounts to cover such payments. In doing so, the Banks are authorized to rely on the representations of the Debtors as to which checks and fund

transfers are issued or authorized to be paid pursuant to this Order. If any of the Banks honors a prepetition check or other item drawn on any account that is the subject of this Order: (a) at the direction of the Debtors to honor such prepetition check or item, (b) in good faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as a result of an innocent mistake, such Banks shall not be deemed to be liable to the Debtors or their estates or otherwise in violation of this Order.

9. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of this Motion or otherwise deemed waived.

10. The automatic stay in section 362 of the Bankruptcy Code applies extraterritorially and prohibits any attachment, arrest, seizure, or any other adverse action taken against the Debtors' aircraft or equipment.

11. Pursuant to section 362 of the Bankruptcy Code, the commencement of the Chapter 11 Cases shall operate as a stay, applicable to all persons (including individuals, partnerships, corporations, and all those acting for or on their behalf) and all foreign and domestic governmental units (and all those acting for or on their behalf) of:

- a. The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the Debtors that was or could have been commenced before the commencement of the Debtors' Chapter 11 cases, or an act to recover a claim against the Debtors that arose before the commencement of the Debtors' Chapter 11 Cases;
- b. The enforcement, against the Debtors or against property of their estates, of a judgment obtained before the commencement of the Debtors' Chapter 11 Cases;
- c. Any act to obtain possession of property of the estates or of property from the estates or to exercise control over property of the Debtors' estates;
- d. Any act to create, perfect, or enforce any lien against property of the Debtors' estates;

- e. Any act to create, perfect, or enforce against property of the Debtors any lien to the extent that such lien secures a claim that arose before the commencement of the Debtors' Chapter 11 Cases;
- f. Any act to collect, assess, or recover a claim against the Debtors that arose before the commencement of the Debtors' Chapter 11 Cases;
- g. The setoff of any debt owing to the Debtors that arose before the commencement of the Chapter 11 Cases; and
- h. The commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of the Debtors for a taxable period the bankruptcy court may determine.

12. This Order shall not affect the exceptions to the automatic stay contained in section 362(b) of the Bankruptcy Code or the right of any party in interest to seek relief from the automatic stay in accordance with section 362(d) of the Bankruptcy Code.

13. Pursuant to section 365(e) of the Bankruptcy Code, and notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the Debtors may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the Debtors' Chapter 11 Cases solely because of a provision in such contract or lease that is conditioned on (i) the insolvency or financial condition of any or all Debtors or (ii) the commencement of the Debtors' Chapter 11 Cases.

14. Pursuant to section 525 of the Bankruptcy Code, a foreign or domestic governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, the Debtors or the Debtors' affiliates on account of (i) the commencement of the Debtors' Chapter 11 Cases, (ii) the Debtors' insolvency, or (iii) the fact that the Debtors have not paid a debt that is dischargeable in the Chapter 11 Cases.

15. Pursuant to section 541(c) of the Bankruptcy Code, any interest of the Debtors in property becomes property of the estates, notwithstanding any provision in any agreement, transfer instrument, or applicable nonbankruptcy law, that: (a) restricts or conditions transfer of such interest by the Debtors, or (b) is conditioned on the insolvency or financial condition of the Debtors or on the commencement of the Debtors' Chapter 11 Cases, and that effects or gives an option to effect a forfeiture, modification, or termination of the Debtor's interest in property.

16. This Order is intended to be declarative of and coterminous with, and shall neither abridge, enlarge nor modify, the rights and obligations of any party under sections 362, 365, 525, and 541(c) of the Bankruptcy Code.

17. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with this Motion.

18. To the extent that this Order is inconsistent with any prior order or pleading with respect to this Motion in these cases, the terms of this Order shall govern.

19. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

20. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

###END OF ORDER###

Submitted by:

HAYNES AND BOONE, LLP

Kenric D. Kattner
State Bar No. 11108400
Kourtney Lyda
State Bar No. 24013330
1221 McKinney Street, Suite 2100
Houston, TX 77010
Telephone: 713.547.2000
Facsimile: 713.547.2600
Email: kenric.kattner@haynesboone.com
Email: kourtney.lyda@haynesboone.com

and

Ian T. Peck
State Bar No. 24013306
David Staab
State Bar No. 24093194
2323 Victory Avenue, Suite 700
Dallas, TX 75219
Telephone: 214.651.5000
Facsimile: 214.651.5940
Email: ian.peck@haynesboone.com
Email: david.staab@haynesboone.com

PROPOSED ATTORNEYS FOR DEBTORS

Exhibit B

Proposed Final Order

**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.	§	(Joint Administration Requested)

**FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363(b), 363(c), 1107(a), AND 1108 AND
FED. R. BANKR. P. 6003(b) AND 6004(h (I) AUTHORIZING DEBTORS TO PAY
PREPETITION OBLIGATIONS OWED TO FOREIGN CREDITORS, (II) AUTHORIZING
AND DIRECTING FINANCIAL INSTITUTIONS TO HONOR AND PROCESS RELATED
CHECKS AND TRANSFERS, AND (III) SCHEDULING FINAL HEARING**

Upon the motion (the “**Motion**”)² of the above-referenced Debtors (the “**Debtors**”) for entry of final order (this “**Order**”), pursuant to sections 363(b) and 105(a) of title 11, United

¹ The Debtors in the 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.

² All capitalized terms used but otherwise not defined herein shall have the meanings set forth in this Motion.

States Code (the “**Bankruptcy Code**”), (a) authorizing, but not directing, the Debtors to pay, in their sole discretion, any prepetition claims owing to Foreign Creditors and (b) authorizing and directing the Debtors’ banks to receive, process, honor, and pay, to the extent of funds on deposit, any prepetition checks drawn or fund transfer requests made for payment of claims owing to Foreign Creditors without further order of the Court, all as more fully described in this Motion and as set forth in this Order; and the Court having jurisdiction to consider this Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of this Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. § 1408; and due and proper notice of this Motion being adequate and appropriate under the particular circumstances; and the Court having entered the *Interim Order Authorizing Debtors to Pay Prepetition Obligations Owed to Foreign Creditors (II) Authorizing and Directing Financial Institutions to Honor and Process Related Checks and Transfers and (III) Scheduling Final Hearing* [Docket No._____] (the “**Interim Order**”); and a hearing having been held to consider the relief requested in this Motion (the “**Hearing**”); and upon consideration of the Lancelot Declaration, the record of the Hearing and all proceedings had before the Court; and the Court having found and determined that the relief sought in this Motion (to the extent consistent with the terms set forth below) is in the best interests of the Debtors’ estates, their creditors, and other parties in interest, and that the legal and factual bases set forth in this Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED:

1. This Motion is granted on a final basis to the extent set forth herein.
2. The relief provided in the Interim Order is approved on a final basis.

3. The Debtors are authorized, but not directed, to pay, in their sole discretion, as and when due, the Foreign Claims.

4. Notwithstanding anything to the contrary herein, any payments made or to be made under this 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 proposed 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 proposed second lien super-priority term loan facility (the “**DIP Term Facility**,” together with the DIP Revolving Facility, the “**DIP Facility**”).

5. Any payment in excess of \$50,000 under this Order shall be subject to the consent of the Backstop Parties (as defined in the DIP Orders); provided, that if the Backstop Parties do not object in writing (including email) to the payment of such amounts within 48 hours of receiving notice (including email) from the Debtors, the Backstop Parties shall be deemed to have consented.

6. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtors, a waiver of the Debtors’ rights to subsequently dispute such claim or the assumption or adoption of any agreement, contract or lease under section 365 of the Bankruptcy Code. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order or any payment made pursuant to this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim against the Debtors, a waiver of the Debtors’ rights to

subsequently dispute such claim or the assumption or adoption of any agreement, contract or lease under section 365 of the Bankruptcy Code.

7. The Debtors' banks and other financial institutions (collectively, the "**Banks**") shall be and hereby are authorized and directed to receive, process, honor and pay all prepetition checks and electronic fund transfers that are authorized under this Order, provided that sufficient and cleared funds are on deposit in the applicable accounts to cover such payments. In doing so, the Banks are authorized to rely on the representations of the Debtors as to which checks and fund transfers are issued or authorized to be paid pursuant to this Order. If any of the Banks honors a prepetition check or other item drawn on any account that is the subject of this Order: (a) at the direction of the Debtors to honor such prepetition check or item, (b) in good faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as a result of an innocent mistake, such Banks shall not be deemed to be liable to the Debtors or their estates or otherwise in violation of this Order.

8. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of this Motion or otherwise deemed waived.

9. The automatic stay in section 362 of the Bankruptcy Code applies extraterritorially and prohibits any attachment, arrest, seizure, or any other adverse action taken against the Debtors' aircraft or equipment.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with this Motion.

11. To the extent that this Order is inconsistent with any prior order or pleading with respect to this Motion in these cases, the terms of this Order shall govern.

12. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

13. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

###END OF ORDER###

Submitted by:

HAYNES AND BOONE, LLP

Kenric D. Kattner
State Bar No. 11108400
Kourtney Lyda
State Bar No. 24013330
1221 McKinney Street, Suite 2100
Houston, TX 77010
Telephone: 713.547.2000
Facsimile: 713.547.2600
Email: kenric.kattner@haynesboone.com
Email: kourtney.lyda@haynesboone.com

and

Ian T. Peck
State Bar No. 24013306
David Staab
State Bar No. 24093194
2323 Victory Avenue, Suite 700
Dallas, TX 75219
Telephone: 214.651.5000
Facsimile: 214.651.5940
Email: ian.peck@haynesboone.com
Email: david.staab@haynesboone.com

PROPOSED ATTORNEYS FOR DEBTORS