

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
EMERALD OIL, INC., <i>et al.</i> , ¹)	Case No. 16-10704 (KG)
Debtors.)	(Jointly Administered)
)	Re: Docket No. 78

**ORDER (I) AUTHORIZING THE EMPLOYMENT AND RETENTION
OF INTREPID PARTNERS LLC AS FINANCIAL ADVISOR FOR THE DEBTORS AND
DEBTORS IN POSSESSION, EFFECTIVE *NUNC PRO TUNC* TO THE
PETITION DATE AND WAIVING CERTAIN INFORMATION REQUIREMENTS
IMPOSED BY LOCAL RULE 2016-2 AND (II) GRANTING RELATED RELIEF**

Upon the application (the “Application”)² of the Debtors for entry of this Order authorizing the Debtors to employ and retain Intrepid Partners LLC (“Intrepid”) as financial advisor to the Debtors, effective *nunc pro tunc* to the Petition Date, and requesting a waiver of the time keeping requirements of Local Rule 2016-2 and the U.S. Trustee Guidelines; and upon the Hart Declaration; and upon the Winchenbaugh Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Emerald Oil, Inc. (9000); Emerald DB, LLC (2933); Emerald NWB, LLC (7528); Emerald WB LLC (8929); and EOX Marketing, LLC (4887). The location of the Debtors' service address is: 200 Columbine Street, Suite 500, Denver, Colorado 80206.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Application.

having found that the relief requested in the Application is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Application and opportunity for a hearing on the Application were appropriate and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Application and at the Hearing establish just cause for the relief granted herein; and any objections (if any) to the requested relief having been withdrawn or overruled on the merits; and the Court being satisfied based on the representations made in the Application, the Hart Declaration, and the Winchenbaugh Declaration that (a) Intrepid does not hold or represent an interest adverse to the Debtors' estates and (b) Intrepid is a "disinterested person" as defined in section 101(14) of the Bankruptcy Code as required by section 327(a) of the Bankruptcy Code, Bankruptcy Rule 2014(a) and Local Rule 2014-1; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Application is approved as set forth herein.
2. The Debtors are authorized to retain and employ Intrepid as their financial advisor in these chapter 11 cases, pursuant to the terms and conditions set forth in the Application, this Order, and the Engagement Letter attached hereto as Exhibit 1, *nunc pro tunc* to the Petition Date.
3. Except to the extent set forth herein, the Engagement Letter (together with all annexes thereto), including without limitation the Fee Structure, is approved pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, and the Debtors are authorized and directed to perform their payment, reimbursement, contribution and indemnification obligations and their

non-monetary obligations in accordance with the terms and conditions of, and at the times specified in, the Engagement Letter. Subject to Paragraph 6 of this Order, all compensation, reimbursement of expenses, indemnification, contribution and reimbursement to Intrepid and any Indemnified Party (as defined in the Engagement Letter) under the Engagement Letter shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code, and shall not be subject to any other standard of review including but not limited to that set forth in section 330 of the Bankruptcy Code; *provided however*, that the Engagement Letter shall be modified as follows:

- a. The first sentence of Section (ii) on page 3 of the Engagement Letter shall be deleted and replaced with the following language: "an additional fee (the "Restructuring Fee") of \$2,000,000, which can only be earned one time under this Agreement."
- b. Section (i)(A) on page 4 of the Engagement Letter shall be deleted and placed with the following language: "an additional fee (the "Sale Transaction Fee")", if, in connection with a Restructuring or otherwise, the Company consummates a Sale. The Sale Transaction Fee shall be equal to the greater of (A) \$2,000,000 and (B) the fee calculated based on the Aggregate Consideration as set forth in Schedule I hereto. The Sale Transaction Fee shall be earned and payable (x) 20% upon the execution of a definitive agreement with respect to a Sale, and (y) the remainder upon consummation of a Sale. 100% of any Sale Transaction Fee paid by the Company shall be credited against the Restructuring Fee."
- c. The table in Schedule I shall be deleted and replaced with the following:

<u>Aggregate Consideration (\$ in millions)</u>	<u>Fee %</u>
Less than or equal to \$100	2.750%
Greater than \$100	3.000%

4. The terms of the Engagement Letter are approved in all respects except as limited or modified herein.

5. The Debtors are authorized to pay Intrepid's fees and to reimburse Intrepid for its reasonable costs and expenses as provided in the Engagement Letter, including but not limited to

in-sourced document production costs, travel costs, meals, and the fees, disbursements and other charges of Intrepid's external legal counsel (without the need for such legal counsel to be retained as a professional in these chapter 11 cases and without regard to whether such legal counsel's services satisfy section 330(a)(3)(C) of the Bankruptcy Code). In the event that Intrepid seeks reimbursement from the Debtors for attorneys' fees and expenses pursuant to the Application and the Engagement Letter, the invoices and supporting time records for the attorneys' fees and expenses shall be included in Intrepid's own applications, both interim and final, and these invoices and time records shall be subject to the U.S. Trustee Guidelines and the approval of the Bankruptcy Court pursuant to sections 330 and 331 of the Bankruptcy Code without regard to whether such attorneys have been retained under section 327 of the Bankruptcy Code, and without regard to whether such attorneys' services satisfy section 330(a)(3)(C) of the Bankruptcy Code.

6. Intrepid shall file interim and final fee applications for the allowance of compensation for services rendered and reimbursement of expenses incurred in accordance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of the Court; *provided*, that the requirements of the Bankruptcy Code, the Bankruptcy Rules, and Local Rule 2016-2 are hereby modified such that Intrepid's restructuring professionals shall be required to maintain summary records in half-hour increments describing each professional's tasks on a daily basis in support of each fee application, including reasonably detailed descriptions of those services and the individuals who provided those services, and will present such records to the Court.

7. Intrepid shall be compensated in accordance with the terms of the Engagement Letter and, in particular, all of Intrepid's fees and expenses in these chapter 11 cases

are hereby approved pursuant to section 328(a) of the Bankruptcy Code. Notwithstanding anything to the contrary herein, the fees and expenses payable to Intrepid pursuant to the Engagement Letter shall be subject to review only pursuant to the standards set forth in section 328(a) of the Bankruptcy Code and shall not be subject to the standard of review set forth in section 330 of the Bankruptcy Code, except by the U.S. Trustee. This Order and the record relating to the Court's consideration of the Application shall not prejudice or otherwise affect the rights of the U.S. Trustee to challenge the reasonableness of Intrepid's compensation and expense reimbursements under sections 330 and 331 of the Bankruptcy Code. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding on the U.S. Trustee, on appeal or otherwise, with respect to the reasonableness of Intrepid's compensation.

8. The indemnification, contribution, and reimbursement provisions included in Attachment A to the Engagement Letter are approved, subject during the pendency of these cases to the following modifications:

- a. Intrepid shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Letter, unless the indemnification, contribution, or reimbursement is approved by the Court.
- b. Notwithstanding any provision of the Engagement Letter to the contrary, the Debtors shall have no obligation to indemnify any Indemnified Party (as defined in the Engagement Letter), or provide contribution or reimbursement to any Indemnified Party, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from the Indemnified Party's gross negligence, willful misconduct, bad faith, or self-dealing to which the Debtors have not consented; (ii) for a contractual dispute in which the Debtors allege breach of the Indemnified Party's obligations to maintain the confidentiality of non-public information, unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled without the Debtors' consent prior to a judicial determination as to the Indemnified Party's gross negligence, willful misconduct, bad faith, or unconsented self-dealing, but determined by this Court, after notice and a

14. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: April 26, 2016
Wilmington, Delaware


UNITED STATES BANKRUPTCY JUDGE