

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

In re:	)	
	)	Case No. 17-10064 (KG)
Chieftain Sand and Proppant, LLC, <i>et al.</i> ,	)	Chapter 11
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	

**DECLARATION OF HOWARD A. COHEN IN SUPPORT OF  
APPLICATION OF THE DEBTORS AND DEBTORS IN POSSESSION  
FOR ENTRY OF AN ORDER AUTHORIZING THE EMPLOYMENT  
AND RETENTION OF GIBBONS P.C. AS GENERAL BANKRUPTCY COUNSEL  
TO THE DEBTORS, NUNC PRO TUNC TO THE PETITION DATE**

I, HOWARD A. COHEN, under penalty of perjury, states as follows:

1. This declaration (the “Declaration”) is being submitted in support of the application (the “Application”) of the above-captioned debtors and debtors-in-possession (the “Debtors”) for entry of an order authorizing the employment and retention of Gibbons P.C. (“Gibbons”) as general bankruptcy counsel to the Debtors.

2. I am an attorney and director at the law firm of Gibbons. I make this Declaration pursuant to sections 327, 328, 329 and 504 of title 11 of the United States Code (11 U.S.C. §§ 101 *et seq.* as amended, the “Bankruptcy Code”), Rules 2014 and 2016(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Bankruptcy Rules”).

3. Unless otherwise stated, I have personal knowledge of the facts set forth herein.

To the extent that any information disclosed herein requires amendment or modification upon

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<sup>1</sup> The Debtors in these chapter 11 cases, and the last four digits of their respective federal tax identification numbers, are Chieftain Sand and Proppant, LLC (1729) and Chieftain Sand and Proppant Barron, LLC (0418). The Debtors’ service address is: 331 27<sup>th</sup> Street, New Auburn, WI 54757.

Gibbons' completion of further analysis or as additional party-in-interest information becomes available to me, Gibbons will submit a supplemental verified statement to this Court.

**SERVICES TO BE RENDERED**

4. It is my understanding that the Debtors are seeking to employ and retain, pursuant to section 327(a) of the Bankruptcy Code, Gibbons as general bankruptcy counsel to the Debtors.

5. The professional services that Gibbons will render to the Debtors include, but shall not be limited to, the following:

(a) advising the Debtors of their rights, powers, and duties as debtors and debtors in possession under chapter 11 of the Bankruptcy Code;

(b) taking action to protect and preserve the Debtors' estates, including the prosecution of actions on the Debtors' behalf, the defense of actions commenced against the Debtors in these chapter 11 cases, the negotiation of disputes in which the Debtors are involved, and the preparation of objections to claims filed against the Debtors;

(c) assisting in preparing on behalf of the Debtors all motions, applications, answers, orders, reports, and papers in connection with the administration of the Debtors' estates;

(d) prosecuting on behalf of the Debtors the proposed plan and seeking approval of all transactions contemplated therein and in any amendments thereto; and

(e) performing other necessary or desirable legal services in connection with these chapter 11 cases.

6. Gibbons has agreed to act on behalf of, and to render such services to, the Debtors.

**GIBBONS' PROCEDURES**

7. In preparing this Declaration, I utilized a set of procedures established by Gibbons to ensure compliance with the Bankruptcy Code and the Bankruptcy Rules regarding the employment of professionals by debtors-in-possession under the Bankruptcy Code.

8. In that connection, I caused to be submitted the names of the significant parties-

in-interest identified on **Exhibit 1**, attached hereto, in these cases that are known to me after inquiry for review under the conflict check system maintained by Gibbons. Using information provided by the Debtors, Gibbons professionals working under my supervision compared the names of the Debtors and potential parties-in-interest, including the top 20 unsecured creditors and other key parties-in-interest (the "**Searched Parties**"), to the names that Gibbons has compiled into its conflict check system and adverse party index. A list of the Searched Parties is attached to this Declaration as **Exhibit 1**.

9. Gibbons maintains and systematically updates its client database in the ordinary course of business, and it is the regular practice of Gibbons to make and maintain these records. The client database maintained by Gibbons is designed to include every matter on which Gibbons is now or has been engaged within at least the past five (5) years, the entity by which Gibbons is now or has been engaged and, in each instance, the identity of related parties and adverse parties and the attorney at Gibbons that is knowledgeable about the matter. Any matches between Gibbons' conflict check system and the Searched Parties were identified and reviewed (the "**Client Match List**"). The Client Match List is attached hereto as **Exhibit 2**. As additional parties-in-interest appear in these cases, Gibbons will submit their names to its conflict check system and update its disclosures, as necessary.

10. It is the policy of Gibbons that no new matter may be accepted or opened without completing and submitting to those charged with maintaining the client database the information necessary to check each such matter for conflicts, including the identity of the prospective client, the matter, and related and adverse parties. Accordingly, the client database is regularly updated for every new matter undertaken by Gibbons.

**DISINTERESTEDNESS OF GIBBONS**

11. To the best of my knowledge, information and belief, except as otherwise disclosed herein, neither I nor Gibbons, its directors, counsel and associates (a) are creditors, equity security holders or insiders of the Debtors, (b) are and were, within two years before the Petition Date, directors, officers or employees of the Debtors, (c) hold or represent any interest materially adverse to the interest of the Debtors' estates and (d) are related to any judge of this Court, the United States Trustee for the District of Delaware (the "U.S. Trustee") or any employee of the U.S. Trustee in this District.

12. To the best of my knowledge, information and belief, except as otherwise disclosed herein, neither I nor Gibbons, its directors, counsel or associates have any connection with the Debtors or any other parties-in-interest in these chapter 11 cases, except that Gibbons represented in the past five years, currently represents, and may represent in the future those entities listed on **Exhibit 2**.<sup>2</sup> Certain of the entities listed on **Exhibit 2** are dormant or inactive clients at this time. In the case of each of the entities listed on **Exhibit 2**, the revenues derived from such client during the past calendar year are not a material component of the firm's revenues. Gibbons has not in the past represented, does not currently represent, and will not in the future represent, any of the entities listed on **Exhibit 2** in connection with these cases or in any matter adverse to the Debtors.

13. Accordingly, I submit that, to the best of my knowledge, information and belief, both myself and Gibbons, its directors, counsel and associates are "disinterested persons" within the meaning of section 101(14), as modified by section 1107(b) of the Bankruptcy Code, and Gibbons' representation of the Debtors is permissible under sections 327(a) and 328(a) of the Bankruptcy Code and is in the best interests of parties-in-interest.

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<sup>2</sup> Gibbons is involved in unrelated matters with certain of the professionals set forth on Exhibit 1.

**PREPETITION SERVICES RENDERED**

14. Other than in connection with the preparation for and filing of these chapter 11 proceedings as set forth below, within one year of the Petition Date Gibbons did not receive any payments from the Debtors on account of services rendered by Gibbons.

15. Gibbons was first retained by the Debtors on September 23, 2016. Gibbons holds no pre-petition claim against the Debtors as all invoices were paid by the Debtors prior to the Petition Date. Since September 23, 2016, Gibbons has billed the Debtors a total of \$261,155.15 for services rendered and expenses incurred in respect of Gibbons' representation of the Debtors. The Debtors paid Gibbons retainer payments of \$25,000 on September 26, 2016, \$25,000 on October 7, 2016, \$75,000 on October 20, 2016, \$40,000 on December 2, 2016, \$25,000 on December 13, 2016, \$50,000 on December 20, 2016 and \$25,000 on January 5, 2017. On October 19, 2016, Gibbons issued its invoice in the amount of \$24,627.50, which invoice was paid on October 31, 2016 from retainer proceeds. On November 10, 2016, Gibbons issued its invoice in the amount of \$27,919.00, which invoice was paid on November 14, 2016 from retainer proceeds. On December 7, 2016, Gibbons issued its invoice in the amount of \$69,797, which invoice was paid on December 8, 2016 from retainer proceeds. On January 9, 2017, Gibbons issued its invoice in the amount of \$138,811.65, which invoice was paid prior to filing from retainer proceeds. As of the Petition Date, Gibbons holds a retainer in the amount of \$3844.85.

**PROFESSIONAL COMPENSATION**

16. Gibbons categorizes its billings by subject matter, in compliance with the U.S. Trustee Guidelines. Gibbons agrees to charge, and the Debtors have agreed to pay Gibbons' normal hourly rates, subject to this Court's approval pursuant to sections 330 and 331 of the

Bankruptcy Code, Bankruptcy Rule 2016 and the Local Bankruptcy Rules.

17. The Gibbons attorneys and paraprofessionals staffed on these cases, subject to modification depending upon further development, are as set forth below:

<u>Name</u>	<u>Title</u>	<u>Hourly Rate</u>
Howard A. Cohen	Director	\$555.00
Karen Gianelli	Director	\$705.00
Natasha Songonuga	Director	\$505.00
Brett Theisen	Associate	\$425.00
Ellen Rosen	Paralegal	\$265.00
Donna Seward	Filing Clerk	\$165.00

18. The hourly rates set forth above are the standard hourly rates for work of this nature. These rates are set at a level designed to fairly compensate Gibbons for its work and to cover fixed and routine overhead expenses. It is Gibbons' policy to charge its clients in all areas of practice for all other expenses incurred in connection with the client's case. The expenses charged to clients include, among other things, certain facsimile charges, mail and express mail charges, special or hand-delivery charges, document processing, photocopying charges, travel expenses, expenses for "working meals," computerized research, and transcription costs, as well as non-ordinary overhead expenses such as overtime for secretarial and other staff.

19. The hourly rates set forth above are subject to periodic adjustments to reflect economic and other conditions and are typically reviewed by Gibbons on an annual basis. Other attorneys and paralegals may from time to time serve the Debtors in connection with the matters herein described.

20. Gibbons will charge the Debtors' estates for these expenses in a manner and at rates consistent with charges made generally to its clients. Gibbons acknowledges that all amounts paid to Gibbons during these chapter 11 cases are subject to final allowance by this

Court. Gibbons therefore intends to apply to this Court for allowance of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, Local Bankruptcy Rules and any orders relevant thereto for all services performed and expenses incurred after the Petition Date.

21. No arrangement is proposed between the Debtors and Gibbons for compensation to be paid in these cases other than as set forth herein.

22. Based on the statements contained herein, I believe that Gibbons is eligible for employment and retention by the Debtors.

23. The foregoing constitutes the statement of Gibbons pursuant to sections 327(a), 328(a), 329 and 504 of the Bankruptcy Code, Bankruptcy Rules 2014(a) and 2016(b) and Local Rule 2016-1.

24. Gibbons will amend this statement upon learning that (i) any of the within representations are no longer correct or (ii) there is any material change of circumstance requiring additional disclosure.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Dated: January 11, 2017

/s/ Howard A. Cohen

Howard A. Cohen, Esq. (DE 4082)

**EXHIBIT 1**

**(SEARCHED PARTIES)**

**Debtors**

Chieftain Sand and Proppant, LLC  
Chieftain Sand and Proppant Barron, LLC

**Secured Lenders**

Energy Capital Partners Mezzanine  
Opportunities Fund, LP  
Energy Capital Partners Mezzanine  
Opportunities Fund A, LP  
Energy Capital Partners Mezzanine  
Opportunities Fund B, LP

**Largest Creditors/Other Secured Parties**

Agri-Empresa Transload & Storage  
Applied Economics Consulting Group, Inc.  
Barron County Treasurer  
Barron Electric Cooperative  
Aring Equipment Co. Inc.  
CNH Industrial Capital America LLC  
Cameron Rail Site LLC  
Brannt Valley Inc.  
Wells Fargo Bank NA  
Caldwell-Baker Company  
Caterpillar Financial Services Corporation  
CIT Group/Equipment Financing, Inc.  
Continental Intermodal Group, LP  
Dave Hanson  
Iowa Northern Railway Co  
Knapp Railroad Builder, Inc.  
Robert Peterson  
Stout Construction Inc.  
Tidewater Logistics Corp  
Twin Eagle Sand Logistics, LLC.  
Union Pacific Railroad  
Wisconsin Northern Railroad

**Professionals**

Donlin Recano & Company, Inc.  
Tudor Pickering & Holt Co.  
Eisner Amper  
Lighthouse Management Group  
Latham & Watkins LLP

**Taxing Authorities**

Barron County Treasurer  
Texas Franchise taxes

**Insurance Parties**

American Mining Insurance Co  
Aon Premium Finance LLC  
Axis Insurance Co  
Ironshore Specialty Insurance Co  
Berkley National Insurance Co  
Argonaut Insurance Co  
Travelers Casualty and Surety Co of  
America  
Aon Risk Insurance Svcs West Inc  
Anthem Blue Cross and Blue Shield  
Delta Dental of Wisconsin  
Eye Med Vision Care  
Optumhealth  
Unum Life Insurance Co of America

**Noteholders**

Russell Driver  
Chris Wright  
Ernst Von Metzsch  
Grant Whiteside  
Jim Hilary  
Jim Powers  
John Potter  
Jon Cummings  
Lane Hamilton  
Robert Scannell Feehan Partners LP  
Roland Von Metzsch  
Scott Peters PV Partners LP 3 Har  
Neal Jacobs  
David Hanson

**Directors and Officers (current and former)**

Victor Serri



Timothy Becker  
David Hanson  
Greg Krizan  
Bob Derks  
Russell Driver  
Peter Labatt  
Trent Kososki  
Matthew Delaney

**Equity Interest Holders**

Victor Serri  
Bob Derks  
Russell Driver  
David Hanson – DH holdings  
Amy Scott Jacobs  
Chris Wright  
Ernst Von Metzsch  
Jim Hilary  
John Potter  
Jon Cummings  
Lane Hamilton  
Neal and Amy Jacobs  
Robert Scannell – Feehan Partners LP  
Roland Von Metzsch  
Ron Evans  
Scott Peters  
Yohai Bersnstein  
Jerry Mitchell  
Wes Schrader  
Energy Capital Partners  
Grant Whiteside

**Office of the U.S. Trustee**

Andrew R. Vara

T. Patrick Tinker  
Lauren Attix  
David Buchbinder  
Linda Casey  
Natalie Cox  
Holly Dice  
Shakima L. Dortch  
Timothy J. Fox, Jr.  
David Gerardi  
Diane Giordano  
Christine Green  
Benjamin Hackman  
Jeffrey Heck  
Mark Kenney  
Jane Leamy  
Hannah M. McCollum  
James R. O'Malley  
Michael Panacio  
Juliet Sarkessian  
Richard Schepacarter  
Edith A. Serrano  
Karen Starr  
Ramona Vinson  
Michael West  
Dion Wynn

**United States Bankruptcy Court  
for the District of Delaware**

Hon. Brendan L. Shannon  
Hon. Laurie Selber Silverstein  
Hon. Kevin Gross  
Hon. Mary F. Walrath  
Hon. Kevin J. Carey  
Hon. Christopher S. Sontchi

**EXHIBIT 2**  
**(DISCLOSURES)**

Name	Relationship to Debtors	Relationship to Gibbons
Caterpillar Financial Services	Contract/Creditor	Client
CIT Group/Equipment Financing, Inc.	Contract/Creditor	Client
Fabick CAT/FABCO Equipment	Contract/Creditor	Affiliate of Client
Wells Fargo Rail	Creditor	Client
CSC	Creditor	Client
Verizon Wireless	Creditor	Client
Wells Fargo Equipment Fin.	Creditor	Client
Axis Insurance	Insurance Party	Client
Ironshore Specialty Insurance	Insurance Party	Client
Anthem Blue Cross Blue Shield	Insurance Party	Client
Argo Group	Insurance Party	Client
Donnelley Financial Solutions	Creditor	Client
FABCO Equipment Inc.	Creditor	Affiliate of Client
FTS International	Creditor	Client
Travelers Casualty and Surety Co. of America	Insurance Party	Client
Aon Risk Insurance	Insurance Party	Client
Wells Fargo Bank NA	Creditor	Client
Energy Capital Partners	Creditor	Former Client