

EXHIBIT B

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

In re:

Chieftain Sand and Proppant, LLC, *et al.*,

Debtors.

Case No. 17-10064 (KG)

SWORN STATEMENT OF GRANT BAKER

I, Grant Baker, declare under penalty of perjury under the laws of the United States of America that the below is true and correct. I am Vice President of Marketing-Sales for Caldwell-Baker Company (CBC) and also manage the day to day operations of CBC. I have personal knowledge of the matters stated herein as I negotiated the underlying lease with Chieftain Sand and Proppant Barron (“Chieftain”) as well as the amendment to the original lease, communicated directly with employees of Chieftain, and the Iowa Northern and Union Pacific Railroad. The attached lease, Amendment (Schedule B), emails, and invoices between me and others are authentic.

1. CBC owns and leases 4740-4785 cubic foot covered hopper railcars. Although designed for the transportation of grain commodities, they can be used for transporting any dry bulk commodities including sand. I negotiated on behalf of CBC the leasing of 100 railcars to Chieftain for transporting silica sand. That agreement was finalized and signed on January 31, 2013. The lease was original scheduled to expire on September 1, 2016. I was contacted by Chieftain, who wanted to lease an additional 100 railcars and make some changes to the original lease language, in February of 2013. That amendment was titled “Schedule B,” was signed February 11, 2013, and extended the expiration date for the 200 railcars to September 30, 2016. In that Railcar Lease Chieftain is required to perform repairs on “Lessee Maintenance Items” under paragraph 6(a) which states “Lessee Maintenance Items means the entire body/container of the car(s), not limited to slope sheets, Roofing, Side sheets/posts, Partition sheets, hatch covers (no patching), gasket(s), batten arm(s), outlet gate(s) and related components thereof including running boards and ladders.” Chieftain was required to insure the railcars against physical damage in the amount of \$40,000 per railcar. Upon expiration, Chieftain, under paragraph

13(b)(i), is required to return the railcars without damage, “suitable for any sand loading,” no “cause for attention” or “condemnable items” to any of the Lessee Maintenance items, clean, and free of corrosion.

2. Oil prices started to decline starting in October 2014 and crashed in 2015. CBC had several lessees using railcars in frac sand and payments from those lessees, including Chieftain started to come in arrears. Chieftain stopped making payments in arrears and by the summer of 2016, was over one million dollars behind in rent, and late fees were accruing on those owed amounts. Because of lessees either not renewing leases, defaulting, or not paying rent when due, CBC was increasingly having a decrease in operating funds and cash shortfalls.

3. Not only did this downturn adversely affect CBC’s cash flow and liquidity, it created a glut of railcars in the market forcing lease rates down to virtually storage costs. Lessees were also storing cars, which made obtaining storage space much more difficult and expensive. The overall covered hopper railcar market was poor and by 2016 CBC had no place to send its railcars for leasing or suitable storage facilities.

4. In March, 2016, Chris Passauer, who worked for Chieftain, requested that I find storage for railcars we leased to Chieftain. He said Chieftain wanted to return the 200 railcars 7 months early. He told me that Chieftain already had 46 of our railcars in storage on the Iowa Northern Railroad (“IANR”). He also assured me that the IANR could not accept any more empty railcars. Passauer told me he wanted to utilize IANR facilities to repair the railcars and that Chieftain would pay for the inspection and repair costs. Carle E. Baker Jr., the owner of CBC, as well as myself, were highly skeptical that with the market crash and Chieftain’s arrearages, that accepting this offer would be wise or fair. Paragraph 13 required the railcars to be returned in the proper condition and did not provide for Chieftain returning the railcars in “as is” condition or with CBC paying for the repair work.

5. About this same time Greg Krizan, who also worked for Chieftain, told me he wanted to negotiate a loan for a reduced amount but this wasn’t an option unless I could see their financials and understand what kind of assets were available to secure the loan. So in April 2016, I asked for Chieftain’s financials several times. Chieftain refused to provide those financials during that time.

6. Although the lease had a renewal option in paragraph 2 on June 2, 2016, Chieftain stated it would not exercise the renew option. In a follow up email I advised Chieftain that I was attempting to obtain a suitable return location, but that was difficult given the market, the uncertainty over shop space, access to our railcars, and the overall glut of inactive railcars parked across the U.S. I told him nothing had been arranged as of that date. I also advised Chieftain that past due rent at the 1 million dollar mark was reached. That did not include late fees which took the total to well over that amount. I gave Chieftain a return location for 10 railcars located at the IANR on August 31, 2016 to get cars moving in blocks of 10 from there to a location we could inspect, work, and store the railcars for a while. Chieftain did not respond with any car movements and never delivered those 10 railcars to that location.

7. I wondered whether Chieftain was current on its payments to IANR because of Chieftain's condition and the fact it didn't move the ten railcars. I also wondered whether Chieftain intended to deliver any of the railcars at IANR to a return location. On September 8, 2016, I requested a list of railcars that Chieftain would send to a return location once we obtain one. Chieftain emailed me a list of railcars but did not include any railcars that were being held at IANR.

8. On September 26, 2016, I emailed both Doug Weier and Steve Hofkes at Chieftain that a return location would be provided by September 30, 2016, the expiration date, and that the IANR would not be an option. CBC had no prior working relationship with IANR and did not know if they had space or whether it would allow CBC's mobile repair units to work railcars. Additionally, IANR proposed storage rates were 5 times higher than what other storage locations said they would charge.

9. On September 29, 2016, I emailed Weier and Hofkes at Chieftain and provided a return location of the Iowa Traction Railway Company ("IATR"). IATR had track storage at a more favorable track rate and would allow our mobile repair units to operate there so that we could make some repairs to the railcars.

10. On October 5, 2016, Bobby Gary of IANR called me and said that Chieftain told him that no return location had been provided from Chieftain, which was not a true representation. On October 10, 2016, Chieftain was directing some railcars to the IATR return location. I asked Weier when the other 99 railcars will be returned. By October 28,

2016, additional railcars are directed to the IATR return location (56), but none of the 142 was sent from the IANR. In fact, nearly all cars at IANR were being loaded and used at that time according to my tracing reports.

11. On October 13, 2016, Weir of Chieftain wrote Amy Homan of IANR that "Our lease is up on the cars with Caldwell Baker and we are not billing the cars out. They are free to move the cars out to wherever they want. Sorry for any inconvenience that this has caused Iowa Northern." About an hour later I emailed Weir, Hofkes, and Victor Serri, all with Chieftain, and Homan (IANR) this: *"Doug you are lying. Our lease states, 'From and after the the acceptance of the Cars, Lessee shall pay, and shall defend and INDEMNIFY lessor against, all switching, transportation, freight, demurrage, and OTHER charges assessed by ANY railroad OR other entity with respect to such Car (including its movement, use or operation) from the time period beginning after the delivery date of such Cars until the return of such cars to Lessor in accordance with the terms hereof. For the return movement of each car to lessor's designation, Upon return of cars at the end of the lease shall be at Lessee's sole expense to return location designated by lessor upon the expiration or termination of this lease Pursuant to subsection 13 (a) of this lease.' 'Until any car is returned to Lessor, Lessee shall continue to pay rent for such car(s) and lessee shall make all other payments and perform all other obligations under this lease as though the expiration or other termination had not occurred.' 'Nothing in this section shall give lessee the right to retain possession of any cars after expiration or other termination of this lease with respect to such car.' 'Upon the expiration, Repossession, or other termination of this lease with respect to any Car, Lessee, at its sole expense, shall return such Car(s) to Lessor at a point designated by Lessor (The Return Location).' Doug, You and Chieftain made us several Promises to move the cars, we relied on those promises entirely and not moving them is fraud."* On November 3, 2016, IANR emailed me a cancellation notice of the storage agreement with Chieftain that was represented as the "2nd Notice" but I never saw an original and have no idea why I was being copied on the agreement. CBC had no storage agreement with IANR. I was emailed a generic unsigned storage agreement by IANR. I have never seen any signed written agreement between Chieftain and IANR. I requested the signed agreements several times to see what they were talking about and quoted the section in our lease that gives us rights to that documentation. Both the IANR and

Chieftain refused on each occasion. The generic storage agreement states that the notice becomes effective in 60 days. If the generic agreement was what was signed, it would have terminated on January 2, 2017.

12. The generic storage agreement provided that after ten days of the expiration, and the railcars have not been removed, that IANR could use the railcars as it desired. I emailed IANR that they were not allowed to use CBC's railcars but IANR did so anyway, claiming that the storage agreement gave them this authority. The lease has a subleasing provision in paragraph 18(b) which requires many things. A sublease is any agreement Chieftain would enter into for a third party's use of those leased railcars. The generic storage agreement purportedly gave IANR, after termination of the agreement, a right to not only use CBC's railcars but to destroy or cannibalize them for parts.

13. On November 21, 2016, Chieftain emailed me that it had not given authority to IANR to load and use the leased railcars. He said that a third party company had loaded the cars and I should talk with the IANR. In my conversation with the IANR they stated Chieftain did give them authority to use the cars under their agreement with Chieftain. As the car owner CBC was denied its requests for the bills of lading on these movements. My tracing records from the Association of American Railroads (AAR) (sometimes called UMLER) indicated that 67 railcars were loaded and that 31 other railcars were being sent to the IATR. I told Weier, Hofkes, and Serri (all of Chieftain) that the lease doesn't end until the railcars are delivered to our return location and are in the proper condition and was being notified that the rent holdover provision in paragraph 13(c) applies.

14. I emailed Homan at IANR if it would provide CBC access to the 142 railcars in order to inspect them. She replied no and said IANR would not allow CBC employees to inspect the railcars.

15. On January 2, 2017, IATR informed me that it could not indefinitely keep storage space available and eventually IATR cancelled the storage agreement because CBC did not send railcars there costing CBC \$75,000 for that unused storage space

16. IANR told CBC it would charge \$10 per railcar per day. In order to obtain possession of the railcars, IANR required that CBC pay IANR \$250 per railcar for switching charges to have railcars staged for the connecting railroad. Then CBC would be required to make an agreement with the connecting railroad for approximately \$3,000 per railcar

to have the railcars transported from IANR. In order to assist Chieftain in obtaining free transportation when railcars made empty, I had previously told customers on IANR they could load the cars one time for free and send them off IANR lines where I could divert the railcars when they made empty but IANR refused to do this. IANR further stated that they would not allow "OT-5 authority" to their customers to use the cars,¹ however IANR and Chieftain found a way to use the cars even though OT-5 authority was denied by the IANR. The cars were loaded off the IANR railroad line but never diverted when they made empty to our return location. Instead our railcars were sent back to the IANR for continued use which we did not authorize and the lease prohibits under the subleasing provision.

17. Sometime after January 9, 2017, I received in the mail the Debtors petition for bankruptcy. I made calculations of what was due as of the proof of claim deadline.

18. Sometime before March 6, 2017, I filled out the proof of claim and provided the lease and my supporting spreadsheets calculating past due rent, and hold over rent, repair costs, and attorney fees up through May 2017, which I calculated to be \$4,162,694.61. The supporting documentation included invoicing. I referred to an insurance policy as being security. Chieftain was insuring CBC's railcars in the amount of \$40,000 per railcar for physical damage. This policy should cover the cause for attention or condemnable items found on the railcars as Chieftain agreed that this constituted "damage." Paragraph 13(b)(i) of the lease states in part that "Any item that is damaged (or worn beyond what the AAR calls cause for attention or condemnable items or repairs in any AAR rule or (what is considered to be normal by the original component manufacturer) shall be deemed to have been damaged by the negligence of Lessee or its employees, agents or licensees and shall be Lessee's responsibility."

19. IANR has billed CBC storage fees for the 142 railcars in the amount of approximately \$15,407.00 monthly since Debtors filed their petition. . We were also forced to pay for the storage track we had entered into with IATR beginning in October 2016 those storage charges are approximately \$75,000.00 for the 142 cars that Chieftain never sent. The

¹ "OT-5 authority" gives a railroad the right to refuse loading privileges on its tracks. OT-5 approval is an authorization required by the IANR for moving a private railcar (not marked "owned" by another railroad) over its lines.

lease had not expired when Chieftain filed its bankruptcy petition and it was my belief that CBC was prohibited under bankruptcy law to take possession of the railcars.

20. On May 15, 2017, I was contacted by Chieftain who wanted me to give them a return location for one car (RFMX 10859)² that was in Midland, Texas. Apparently Chieftain was going to have it unloaded. I advised them of a location in Hutchinson, Kansas on the Kansas and Oklahoma Railroad. CBC was never asked to pay for the transportation and Chieftain they would submit billing on the car they had continued to use for storing (mobile storage) their sand. On May 25th I received an invoice from the Union Pacific Railroad Company ("U.P.") From the invoice it appears Chieftain put Caldwell-Baker Company as the consignee in the waybill. When a shipper does this, the consignee is financially responsible as the buyer or receiver of the product. The U.P. transportation bill was for \$3,864.00 which U.P. was seeking payment from CBC. The representation to U.P. that CBC was the consignee was fraudulent and improper under the AAR rules. I disputed the bill with the U.P. later and told them that CBC was contesting the designation as consignee. U.P. has removed the bill from CBC's account for now, but if they are not paid under the AAR rules they will come after CBC as consignee on the Bill of Lading.

21. On July 7, 2016, I was provided a bill of lading (BOL) in which Chieftain listed CBC as the consignee meaning it was being represented to the railroad by Chieftain that CBC was financially responsible for transportation costs. This representation made by Chieftain was false.

22. There is still one railcar, RFXM 10334, at an unloading site in Marjorie, Texas which is still loaded with frac sand. It has not been returned. The tracings on this car indicate Chieftain has now designated a return location to Hutchinson, Kansas for that railcar which is not its return location. Chieftain has not requested the return location for that railcar and instead just sent the railcar.

23. CBC would like to make damage claims on the insurance coverage that Chieftain was to obtain. The insurance policy provided me does not appear to be primary without right of contribution. The policy does not insure each railcar for \$40,000. Instead, the policy values railcars at the "AAR value" which could mean either the new built value

² The "RFMX" is a reporting mark of CBC showing the car as privately owned and registered in UMLER. Every railcar has a reporting mark and a different number to identify it.

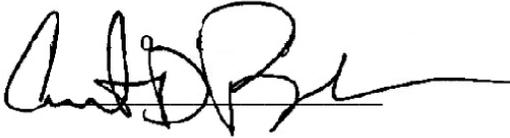
(approximately \$50,000) or a “depreciated value” which for older railcars means they are valued at approximately \$10,000. The policy has a \$10,000 deductible. CBC is not named an additional insured in the policy and only lists CBC as a loss payee. The policy provided CBC does not appear to have the proper coverage required in the insurance provision in the lease agreement.

24. I have calculated 142 cars x \$937.50 per month (which is 250% holdover amount of the \$375 per month) which comes to \$133,125.00 per month or \$133,125.00 divided by 30 days which equals \$4,437.5 per day. I have calculated late fees at 5% per month under the lease at \$6,656.25. January through March has 92 days. From January 9th to February 9th has 31 days x \$4,437.50 = \$137,562.5 (late fees not paid within 5 business days after the due date) \$6,878.125. The total is \$144,440.62. From February 10th to March 9th is 27 days x \$4,437.50 = \$119,812.50. Late fees are \$5,990.625. The total is \$125,803.12. The total is \$270,243.74 from January 9th through March 9th. From March 10th through May 31 is 82 days. From March 10 through April 10 is 31 days x \$4,437.5 per day = \$137,562.50. Late fee are \$6,878.12. The total is \$144,440.62. From April 11th through May 1 is 20 days x \$4,437.5 per day = \$88,750. Late fees are \$4,437.50. The total is \$93,187.50. From May 2nd through May 31st is 29 days x \$4,437.5 per day = \$128,687.50. I have calculated no late fees on this because they don't accrued until 5 business days after due. That amount would be \$6,434.375 on June 6th. The total is \$366,315.62 from March 10th through May 31. The total from January 9th through May 31st is \$636,559.36.

25. I am unable to determine or calculate the repair, maintenance or return repair condition costs of the unreturned railcars as CBC does not have and cannot gain access to the railcars that have not been delivered to CBC.

The above is true and correct and made under penalty of perjury under the laws of the United States of America.

June 5, 2017

A handwritten signature in black ink, appearing to read 'Grant Baker', with a long horizontal flourish extending to the right.

Grant Baker