

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

In re:

WELDED CONSTRUCTION, L.P., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-12378 (KG)

Jointly Administered

**Ref. Docket No. 117**

**ORDER AUTHORIZING THE DEBTORS TO RETAIN, EMPLOY, AND  
COMPENSATE CERTAIN PROFESSIONALS UTILIZED IN THE ORDINARY  
COURSE OF BUSINESS, EFFECTIVE AS OF THE PETITION DATE**

Upon consideration of the motion (the “**Motion**”)<sup>2</sup> of the Debtors for entry of an order authorizing the Debtors to retain, employ, and compensate certain professionals utilized in the ordinary course of business, effective as of the Petition Date; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and this Court may enter a final order consistent with Article III of the United States Constitution; and proper and adequate notice of the Motion and the hearing thereon having been given; and it appearing that no other or further notice being necessary; and it appearing that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor; it is hereby

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



**ORDERED, ADJUDGED, AND DECREED that:**

1. The Motion is GRANTED as set forth herein.
2. The Debtors are authorized, but not directed, in their discretion, to retain, employ, and compensate the OCPs on the OCP List, for their postpetition fees and actual and necessary expenses, in the ordinary course of business, in accordance with the terms of this Order.
3. The following procedures shall govern the retention and compensation of the OCPs (the “**OCP Procedures**”):

(a) Each OCP shall file with this Court, and serve upon (collectively, the “**Notice Parties**”): (i) proposed counsel for the Debtors, Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Tara C. Pakrouh, Esq. and Betsy L. Feldman, Esq.); (ii) the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”), 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Jaclyn Weissgerber, Esq. and Jane M. Leamy, Esq.); (iii) counsel for the DIP Lender, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166, (Attn: Michael A. Rosenthal, Esq. and Matthew K. Kelsey, Esq.); and (iv) proposed counsel to the Committee, Blank Rome LLP, 130 North 18th Street, Philadelphia, PA 19103 (Attn: John E. Lucian, Esq. and Michael B. Schaedle, Esq.), a declaration of disinterestedness (the “**Declaration of Disinterestedness**”), substantially in the form attached as Exhibit B to the Motion, at least fourteen (14) calendar days prior to submitting an invoice to the Debtors.

(b) The Notice Parties shall have fourteen (14) calendar days after service of each OCP’s Declaration of Disinterestedness (the “**Objection Deadline**”) to object to the retention of such OCP. The objecting party shall file such objection with this Court and serve any such objections upon the Notice Parties and the respective OCP on or before the Objection Deadline. If any such objection cannot be resolved within fourteen (14) calendar days of its receipt, the matter shall be scheduled for hearing before this Court at the next regularly scheduled omnibus hearing date in these chapter 11 cases that is not less than seven (7) days after such fourteenth (14<sup>th</sup>) day or such other date otherwise agreeable to the relevant parties. If no objection is received from any of the Notice Parties by the Objection Deadline with respect to any particular OCP or any objection to the particular OCP has been resolved consensually or by order of this Court, the Debtors shall be authorized on a final basis to retain and employ such OCP, effective as of the Petition Date (or such applicable later date), and to compensate such OCP in accordance with the OCP Procedures.

(c) No OCP shall be paid any fees or expenses until its Declaration of Disinterestedness has been filed with this Court and the Objection Deadline has passed with no objections having been filed or, if an objection is filed on or before the Objection Deadline, the objection has been resolved consensually or by order of this Court.

(d) The Debtors shall be authorized to pay, without formal application to this Court by any OCP, 100% of the postpetition fees and expenses advanced to each of the OCPs retained by the Debtors in accordance with the OCP Procedures upon the submission to the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Petition Date, *provided, however*, that postpetition compensation and reimbursement of postpetition expenses paid to an OCP may not exceed \$35,000 per month, on average, over the prior rolling three-month period (the “**OCP Cap**”), *provided, further*, the Debtors reserve their rights to seek to increase the OCP Cap after notice and a hearing.

(e) Any fees and expenses payable to an OCP in excess of the OCP Cap shall be subject to prior approval of this Court in accordance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable orders of this Court authorizing the payment of professionals retained in these chapter 11 cases.

(f) Within thirty (30) days of the close of each calendar quarter (each a “**Quarter**”), beginning with the calendar quarter ending December 31, 2018, the Debtors shall file with this Court, and serve on (a) the U.S. Trustee, (b) counsel to any Committee and (c) counsel to the DIP Lender, a statement identifying the monthly and aggregate amounts paid to each OCP in the reported Quarter.

(g) The Debtors reserve the right to supplement the OCP List, from time to time as necessary, to add or remove OCPs without the need for any further hearing and without the need to file individual retention applications. In the event the Debtors add an OCP, the Debtors propose to file a notice with this Court identifying the supplemental OCPs (a “**Supplemental OCP List**”) and serve it on the Notice Parties. If no objections are filed to any Supplemental OCP List within fourteen (14) days of service thereof, such Supplemental OCP List shall: (i) be deemed approved by this Court without the need for a hearing or further notice or order of this Court; and (ii) be within the purview of this Order and the OCP Procedures.

4. To the extent that any agreement between the Debtors and an OCP provides for the indemnification by the Debtors of such OCP in connection with the services for which the OCP is retained (each such agreement, an “**OCP Agreement**”), the OCP shall attach the OCP Agreement to the Declaration of Disinterestedness and, upon the retention of the OCP

in accordance with the OCP Procedures, the indemnification provisions set forth in the OCP Agreement are approved, subject to the following modifications during the pendency of these chapter 11 cases:

(a) The OCP shall not be entitled to indemnification, contribution, or reimbursement for services provided under the OCP Agreement other than those described in such OCP Agreement, unless such services and indemnification therefor are approved by this Court.

(b) Notwithstanding anything to the contrary in the OCP Agreement, the Debtors shall have no obligation to indemnify the OCP, or provide contribution or reimbursement to the OCP, for any claim or expense related to such OCP Agreement that is: (i) judicially determined (the determination having become final) to have arisen from the OCP's fraud, gross negligence, willful misconduct, bad faith or self-dealing; (ii) for a contractual dispute in which the Debtors allege the breach of the OCP's contractual obligations under the OCP Agreement unless this 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 (c) settled prior to a judicial determination as to the exclusions set forth in clauses (i) and (ii) above, but determined by this Court, after notice and a hearing to be a claim or expense for which the OCP should not receive indemnity, contribution, or reimbursement under the terms of the OCP Agreement as modified by this Order.

(c) If, before the earlier of (i) entry of an order confirming a chapter 11 plan in these cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these chapter 11 cases, the OCP believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the OCP Agreement, including, without limitation, the advancement of defense costs, the OCP must file an application therefor in this Court, and the Debtors may not pay any such amounts to the OCP before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which this Court shall have jurisdiction over any request for fees and expenses by the OCP for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify, or make contributions or reimbursements to, the OCP. All parties in interest in these chapter 11 cases shall retain the right to object to any demand by the OCP for indemnification, contribution, or reimbursement.

5. Any OCP retained under this Order shall not apply amounts received on account of postpetition fees and expenses against any prepetition claims asserted by such OCP.

6. The OCP Procedures will not apply to attorneys or other professionals retained, or to be retained, by the Debtors pursuant to separate orders of this Court.

7. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

8. This Court shall retain jurisdiction with respect to any and all matters arising from or related to the interpretation or implementation of this Order.

A handwritten signature in black ink, appearing to read "Kevin Gross", written over a horizontal line.