

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

In re:

WELDED CONSTRUCTION, L.P., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 18-12378 (KG)
)
)
) (Jointly Administered)
)
) Ref. Docket No. 17

**DECLARATION OF FRANK A. POMETTI IN SUPPORT OF DEBTORS' MOTION
FOR FINAL ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN
POSTPETITION FINANCING, (II) AUTHORIZING THE USE OF CASH
COLLATERAL, (III) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE
EXPENSE STATUS, AND (IV) GRANTING ADEQUATE PROTECTION**

I, Frank A. Pometti, hereby declare as follows:

1. I am the Chief Restructuring Officer (“**CRO**”) of the Debtors. In March of 2018, the Debtors formally engaged Zolfo Cooper, LLC (“**Zolfo**”) to act as their financial advisor in connection with the Debtors’ restructuring initiatives. Thereafter, the Debtors sought to retain me and my team at Zolfo as CRO.

2. In addition to serving as CRO, I am a managing director of Zolfo and have over twenty (20) years of financial and operational experience, spanning a wide range of industries, including construction as well as oil & gas and onshore exploration. I also specialize in assisting distressed and underperforming companies in all areas of operational and financial restructuring, and have advised debtors, creditors, investors, and court-appointed officials in multiple bankruptcy proceedings and out-of-court workouts.

¹ 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.



3. I submit this declaration (this “**Declaration**”) in support of the *Debtors’ Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Authorizing the Use of Cash Collateral, (III) Granting Liens and Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Scheduling a Final Hearing* [Docket No. 17] (the “**DIP Motion**”).²

4. Except as otherwise indicated herein, all facts set forth in this Declaration and the DIP Motion are based upon my personal knowledge of the Debtors’ operations and financial condition, information learned from my review of relevant documents, information supplied to me by other members of the Debtors’ management team and the Debtors’ advisors, or my opinion based upon my knowledge and experience or information I have reviewed concerning the Debtors’ operations and financial condition. I am over eighteen (18) years of age and I am authorized to submit this Declaration on behalf of the Debtors. If called upon to testify, I could and would competently testify to the facts set forth in this Declaration and the DIP Motion based upon my own personal knowledge, except as otherwise stated herein.

I. The DIP Financing and Negotiations

5. In consultation with their advisors, the Debtors negotiated with the DIP Lender regarding potential debtor-in-possession postpetition financing to support the Debtors’ efforts in these chapter 11 cases. The financing provided by the DIP Loans will serve primarily as a bridge while Debtors’ complete work on their Projects and enable the Debtors to engage in an orderly process to exit the Chapter 11 cases.

² Capitalized terms used but not defined herein have the meanings given to such terms in the DIP Motion, as applicable.

6. While negotiating the DIP Facility, Zolfo reached out to five potential third-party sources of financing to gauge their interest in providing debtor-in-possession financing to the Debtors, providing diligence materials and informing them the term and amount of financing required by the Debtors. Those third-party sources included (i) financing firms that have an expertise in the construction industry, and (ii) firms that routinely provide debtor-in-possession financing. Despite Zolfo's efforts, none of the third-party sources provided terms for financing the Debtors and these chapter 11 cases.

7. The Debtors came to agreement with the DIP Lender over the terms of the DIP Facility after extensive good-faith, arms'-length negotiations. The Debtors' decision to seek approval of the proposed DIP financing was delegated to Steven Hawkins—a board member not appointed by Bechtel Oil, Gas and Chemical ("**Bechtel**") or McCaig Investments ("**McCaig**")—and was based on the advice of qualified counsel and the Debtors outside financial advisors, including myself.

8. The DIP Credit Agreement was approved by the Bankruptcy Court on an interim basis pursuant to an order ("**Interim DIP Order**") entered on or about October 23, 2018.

9. The DIP Credit Agreement contemplates postpetition financing in the form of a senior secured, multi-draw term loan in the aggregate principal amount of up to \$20,000,000, \$10,000,000 of which was available on an interim basis and the remaining portion of which is proposed to be available on a final basis up to \$20,000,000. In exchange for the DIP Facility, the Debtors have agreed, among other things, to grant the DIP Lender allowed superpriority administrative expense claims in each of the chapter 11 cases and any Successor Cases, as well as perfected security interests in and liens on all of the DIP Collateral (as defined in the Interim DIP Order).

10. To be sure, the DIP Credit Agreement does not provide for a commitment fee, agent fee, or ticking fee. Additionally, any interest accrued on the DIP loan is only paid to the extent amounts are drawn—meaning, all undrawn DIP loan amounts are committed through the maturity date at no cost to the Debtors unless the money is borrowed.

11. In my professional experience, I believe the interest rate is reasonable and the representation and warranties are standard, especially given the fact that parties have the right to be heard in Court seven (7) days after a default is called, with no limit on what can be argued. Given the foregoing, I believe the collateral package represents market rate or even better in light of our agreements with equipment lessors, certain Customers, and the Sureties.

12. Based on the foregoing, it is my belief that the DIP Facility represents the best, and indeed only, option available to address the Debtors' immediate liquidity needs and that the terms and conditions of the DIP Facility are reasonable and appropriate under the circumstances.

II. The Debtors' Need for DIP Financing

13. I believe that the DIP Facility is critical to the Debtors' ability to (a) continue working through Customer issues on a project-by-project basis to fund ongoing construction and related costs and to satisfy significant claims against the Debtors and their estates, (b) negotiate and satisfy numerous vendor claims and releases in connection with customer agreements approved by the Court, (c) pay operational expenses including employee wages, (d) sell certain equipment and other assets, and (e) pay other post-petition administrative claims, including claims of trade creditors.

14. Specifically, the DIP financing has served, and continues to serve, as a critical bridge in these chapter 11 cases to allow for the implementation of demobilization and/or completion agreements entered into with certain of the Debtors' Customers by ensuring the

Debtors have sufficient funds to pay for administrative expenses not paid by Customers under the demobilization and/or completion agreements and provide needed certainty to the Debtors' post-petition vendors that DIP financing is available to satisfy their post-petition claims. Ensuring the DIP financing is available to allow for the implementation of the Debtors' completion agreements, meanwhile, provides exponential returns to the Debtors' estates. For instance, by ensuring the Debtors have sufficient funds to remain in chapter 11 while administering their estates, the DIP financing allows the Debtors to continue to perform under their completion agreement with Columbia Gas Transmission, LLC ("**Columbia Gas**"), under which Columbia Gas in turn pays the direct ongoing costs of completing their Projects and also pays significant pre-petition claims against the Debtors that would otherwise have to be satisfied from the estate, to the dilution and detriment of all unsecured creditors. And I believe if the DIP financing were not available, the Debtors would have no alternative but to convert to chapter 7 and the benefits of this process to unsecured creditors and all stakeholders would be lost.

15. The DIP Facility will preserve and maximize the value of the Debtors' estates and facilitate the administration of these chapter 11 cases. The Debtors have insufficient cash on hand and no other alternative for financing these cases. As a result, based upon the Debtors' liquidity forecast, I do not expect the Debtors will be able to generate sufficient levels of operating cash flow in the ordinary course of business to cover their working capital needs and the projected costs of these chapter 11 cases and the Debtors will have no alternative but to initiate chapter 7 proceedings and liquidate all of their assets. As a result, Zolfo and the Debtors believe that the availability of the funding provided by the DIP Facility on a final basis is necessary for the success of these chapter 11 cases.

16. Accordingly, I believe it is appropriate and necessary for the Court to approve the DIP Facility on a final basis pursuant to the terms of the Final DIP Order.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: November 29, 2018

/s/ Frank A. Pometti

Frank A. Pometti
Managing Director
Zolfo Cooper, LLC

Chief Restructuring Officer to the Debtors