

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

In re:)	Chapter 11
WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹)	Case No. 18-12378 (KG)
Debtors.)	(Jointly Administered)
)	Related Docket No.: 254
)	Hearing Date: December 20, 2018 at 2:00 p.m. (ET)

**CERTIFICATION OF COUNSEL REGARDING
APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS FOR AN ORDER UNDER BANKRUPTCY CODE SECTIONS 328
AND 1103, BANKRUPTCY RULE 2014, AND LOCAL RULE 2014-1 APPROVING THE
EMPLOYMENT AND RETENTION OF TENEO CAPITAL LLC AS INVESTMENT
BANKER AND FINANCIAL ADVISOR *NUNC PRO TUNC* TO OCTOBER 30, 2018**

I, Jose F. Bibiloni, proposed counsel to the Official Committee of Unsecured Creditors (the “Committee”) of Welded Construction, L.P., *et al.*, hereby certify as follows:

1. On November 19, 2018, the Committee filed and served the *Application of the Official Committee of Unsecured Creditors for an Order Under Bankruptcy Code Sections 328 and 1103, Bankruptcy Rule 2014, and Local Rule 2014-1 Approving the Employment and Retention of Teneo Capital LLC as Investment Banker and Financial Advisor Nunc Pro Tunc to October 30, 2018* [Docket No. 254] (the “Application”). The notice appended to the Application established a deadline of December 3, 2018 at 4:00 p.m. (prevailing Eastern Time) for filing and service of objections or responses to the Application. A hearing on the Application is scheduled for December 20, 2018 at 2:00 p.m. (prevailing Eastern Time).

2. Counsel to the Committee received an informal response from the Office of the United States Trustee (the “OUST”) with respect to the Application. Based upon the informal

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.



18123781812060000000000002

response from OUST, the Committee has prepared a revised proposed form of order granting the Application (the “Revised Order”). The Revised Order is attached hereto as **Exhibit A**. Attached hereto as **Exhibit B** is a blackline reflecting changes between the proposed form of order filed with the Application and the Revised Order. The OUST has confirmed that the OUST does not oppose entry of the Revised Order.

3. Except for the informal response referenced in paragraph 2 above, the Committee has not received any formal or informal response or objection to the Application. Additionally, the undersigned has caused a review of the Court’s docket in these cases and hereby certifies that no response or objection to the Application appears thereon.

WHEREFORE, the Committee respectfully requests entry of the Revised Order attached hereto as **Exhibit A** at the earliest convenience of the Court.

Dated: December 6, 2018
Wilmington, Delaware

BLANK ROME LLP

/s/ Jose F. Bibiloni

Josef W. Mintz (DE No. 5644)
Jose F. Bibiloni (DE No. 6261)
1201 Market Street, Suite 800
Wilmington, Delaware 19801
Telephone: (302) 425-6400
Facsimile: (302) 425-6464
Email: Mintz@BlankRome.com
JBibiloni@BlankRome.com

Michael B. Schaedle (admitted *pro hac vice*)
John E. Lucian (admitted *pro hac vice*)
One Logan Square
130 North 18th Street
Philadelphia, Pennsylvania 19103
Telephone: (215) 569-5500
Facsimile: (215) 569-5555
Email: Schaedle@BlankRome.com
Lucian@BlankRome.com

*Proposed Counsel to the Official Committee
of Unsecured Creditors of Welded
Construction, L.P., et al.*

EXHIBIT A

Revised Order

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

In re:)	
)	Chapter 11
WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹)	Case No. 18-12378 (KG)
Debtors.)	(Jointly Administered)
)	Related Docket Nos.: 254, ____
)	

**ORDER GRANTING APPLICATION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS FOR AN ORDER UNDER BANKRUPTCY CODE
SECTIONS 328 AND 1103, BANKRUPTCY RULE 2014, AND LOCAL RULE 2014-1
APPROVING THE EMPLOYMENT AND RETENTION OF TENEO CAPITAL
LLC AS INVESTMENT BANKER AND FINANCIAL
ADVISOR *NUNC PRO TUNC* TO OCTOBER 30, 2018**

Upon the application (the “Application”)² of the Committee for entry of an order authorizing the employment and retention of Teneo Capital LLC (“Teneo”) as investment banker and financial advisor to the Committee *nunc pro tunc* to October 30, 2018; and upon the Declaration of Christopher K. Wu filed in support of the Application; and it appearing that proper notice of the Application has been given and that no further notice or hearing is required; and the Court being satisfied based on the representations made in the Application and the Declaration that (i) Teneo represents no interest adverse to the Debtors’ estate or the Debtors’ creditors, other than its representation of the Committee in this case, and (ii) the employment of Teneo is necessary and would be in the best interests of the Committee and the Debtors’ estates, and after due deliberation thereon, and sufficient cause appearing therefore it is hereby ordered, adjudged, and decreed that:

1. The Application is granted as set forth herein.

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.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

2. In accordance with Bankruptcy Code sections 328 and 1103(a), the Committee is authorized to employ and empowered to retain Teneo as its investment banker and financial advisor, *nunc pro tunc* to October 30, 2018.

3. Compensation and reimbursement for out-of-pocket expenses to be paid to Teneo, as set forth in the Application, shall be paid as an administrative expense of the Debtors' estates in such amount as shall be allowed and determined upon appropriate applications to the Court and shall be subject to review under Bankruptcy Code sections 330 and 331, the Bankruptcy Rules, the Local Rules, and such other procedures as may be fixed by order of this Court. Notwithstanding anything to the contrary in this Order, the Application, the Engagement Letter, or the Wu Declaration, the U.S. Trustee shall retain the right and be entitled to object to Teneo's fees and expenses based on reasonableness. Nothing in this Order or the record relating to the Court's consideration of the Application shall prejudice or otherwise affect the rights of the U.S. Trustee to challenge the reasonableness of Teneo's compensation and reimbursement requests or bind the U.S. Trustee on appeal or otherwise, with respect to the reasonableness of Teneo's fees and compensation.

4. Teneo shall comply with the requirements set forth in Bankruptcy Rule 2016 and Local Rule 2016-2, *provided, however*, that Teneo is authorized to record its time in one-half hour (0.5) increments.

5. Notwithstanding anything to the contrary in the Engagement Letter or the Application, the following indemnification provisions are hereby approved, as modified and restated herein, as follows:

- a. Teneo shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Letter for services other than those provided under the Engagement Letter, unless such services and the indemnification, contribution, or reimbursement therefore are approved by the Court;
- b. Notwithstanding anything to the contrary in the Engagement Letter, the Debtors shall have no obligation to indemnify Teneo, or provide contribution or

reimbursement to Teneo, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from Teneo's gross negligence, willful misconduct, or fraud; (ii) for a contractual dispute in which the Debtors alleged the breach of Teneo's contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) 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 which Teneo should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter as modified by this Order; and

- c. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these Chapter 11 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, Teneo believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligation under the Engagement Letter (as modified by this Order), including, without limitation, the advancement of defense costs, Teneo must file an application therefore in this Court, and the Debtors may not pay any such amounts to Teneo 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 the Court shall have jurisdiction over any request for fees and expenses by Teneo for indemnification, contribution, or reimbursement, and not to limit the duration of the Debtors' obligation to indemnify Teneo. The Indemnified Persons (as defined in the Engagement Letter) shall retain any rights they may have to contribution at common law. All parties in interest shall retain the right to object to any demand by Teneo.

6. The terms of the Engagement Letter are approved as set forth herein and the Debtors will be bound by such terms and Teneo is authorized to perform the services enumerated in the Application, Engagement Letter, and the Wu Declaration. To the extent there are any conflicts between this Order and the Application, the Engagement Letter, or the Wu Declaration, the terms of this Order shall govern.

7. Any modification of the Monthly Fees shall be subject to the good faith negotiation process set forth in the Application and upon notice to the U.S. Trustee. For the avoidance of doubt, the \$35,000 monthly cap commencing after month 4 shall not be exceeded or otherwise accrue without Committee approval and notice to the U.S. Trustee.

8. As set forth in the Wu Declaration, Teneo shall file appropriate supplemental disclosure(s) with the Court to the extent that additional information concerning any connections is developed.

9. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

EXHIBIT B

Blackline

**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)

)
) Related Docket Nos.: [254](#), —

**ORDER GRANTING APPLICATION OF THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS FOR AN ORDER UNDER BANKRUPTCY CODE
SECTIONS 328 AND 1103, BANKRUPTCY RULE 2014, AND LOCAL RULE 2014-1
APPROVING THE EMPLOYMENT AND RETENTION OF TENEO CAPITAL
LLC AS INVESTMENT BANKER AND FINANCIAL
ADVISOR *NUNC PRO TUNC* TO OCTOBER 30, 2018**

Upon the application (the “Application”)² of the Committee for entry of an order authorizing the employment and retention of Teneo Capital LLC (“Teneo”) as investment banker and financial advisor to the Committee *nunc pro tunc* to October 30, 2018; and upon the Declaration of Christopher K. Wu filed in support of the Application; and it appearing that proper notice of the Application has been given and that no further notice or hearing is required; and the Court being satisfied based on the representations made in the Application and the Declaration that (i) Teneo represents no interest adverse to the Debtors’ estate or the Debtors’ creditors, other than its representation of the Committee in this case, and (ii) the employment of Teneo is necessary and would be in the best interests of the Committee and the Debtors’³ estates, and after due deliberation thereon, and sufficient cause appearing ~~therefor~~therefore it is hereby ordered, adjudged, and decreed that:

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.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Application.

1. The Application is granted as set forth herein.

2. ~~1.~~ In accordance with Bankruptcy Code sections 328 and 1103(a), the Committee is authorized to employ and empowered to retain Teneo as its investment banker and financial advisor, *nunc pro tunc* to October 30, 2018.

3. ~~2.~~ Compensation and reimbursement for out-of-pocket expenses to be paid to Teneo, as set forth in the Application, shall be paid as an administrative expense of the Debtors' estates in such amount as shall be allowed and determined upon appropriate applications to the Court and shall be subject to review under Bankruptcy Code sections 330 and 331, the Bankruptcy Rules, the Local Rules, and such other procedures as may be fixed by order of this Court. Notwithstanding anything to the contrary in this Order, the Application, the Engagement Letter, or the Wu Declaration, the U.S. Trustee shall retain the right and be entitled to object to Teneo's fees and expenses based on reasonableness. Nothing in this Order or the record relating to the Court's consideration of the Application shall prejudice or otherwise affect the rights of the U.S. Trustee to challenge the reasonableness of Teneo's compensation and reimbursement requests or bind the U.S. Trustee on appeal or otherwise, with respect to the reasonableness of Teneo's fees and compensation.

4. ~~3.~~ Teneo ~~is granted a waiver of the information~~ shall comply with the requirements ~~relating to compensation requests~~ set forth in Bankruptcy Rule 2016 and Local Rule 2016-2 ~~(d) to the extent requested in the Application.~~ , provided, however, that Teneo is authorized to record its time in ~~one hour~~ one-half hour (0.5) increments, ~~and is not required to record its time with activity codes for tasks performed during these cases.~~

5. ~~4.~~ Notwithstanding anything to the contrary in the Engagement Letter or the Application, the following indemnification provisions are hereby approved, as modified and restated herein, as follows:

- a. Teneo shall not be entitled to indemnification, contribution or reimbursement pursuant to the Engagement Letter for services other than those ~~described~~ in provided under the Engagement Letter, unless such services and the indemnification, contribution, or reimbursement therefore are approved by the Court;
- b. ~~The~~ Notwithstanding anything to the contrary in the Engagement Letter, the Debtors shall have no obligation to indemnify Teneo, or provide contribution or reimbursement to Teneo, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from Teneo's gross negligence, willful misconduct, or fraud; (ii) for a contractual dispute in which the Debtors alleged the breach of Teneo's contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) 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 which Teneo should not receive indemnity, contribution or reimbursement under the terms of the Engagement Letter as modified by this Order; and
- c. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these ~~cases~~ Chapter 11 Cases (that order having become a final order no longer subject to appeal), ~~or~~ and (ii) the entry of an order closing these Chapter 11 Cases, Teneo believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligation under the Engagement Letter (as modified by this Order), including, without limitation, the advancement of defense costs, Teneo must file an application therefore in this Court, and the Debtors may not pay any such amounts to Teneo 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 the Court shall have jurisdiction over any request for fees and expenses by Teneo for indemnification, contribution, or reimbursement, and not to limit the duration of the Debtors' obligation to indemnify Teneo. The Indemnified Persons (as defined in the Engagement Letter) shall retain any rights they may have to contribution at common law. All parties in interest shall retain the right to object to any demand by Teneo ~~for indemnification, contribution, or reimbursement. If, during the pendency of these Chapter 11 Cases, the indemnification is held unenforceable by reason of the exclusions set forth in subparagraph (b) above (i.e., gross negligence, willful misconduct or fraud), or for a contractual dispute in which~~

~~the Debtors allege the breach of Teneo's contractual obligations (if the Court determines that indemnification would not be permissible pursuant to the United Artists decision) and Teneo makes a claim for payment of amounts by the Debtors on account of the Debtors' contribution obligations, then the proviso set forth in the second sentence of the third paragraph of the Schedule 1 of the Engagement Letter shall not apply. The Indemnified Persons shall retain any rights they may have to contribution at common law.~~

6. ~~5.~~ The terms of the Engagement Letter are approved as set forth herein and the Debtors will be bound by such terms and Teneo is authorized to perform the services enumerated in the Application, Engagement Letter, and the Wu Declaration. To the extent there are any conflicts between this Order and the Application, the Engagement Letter, or the Wu Declaration, the terms of this Order shall govern.

7. Any modification of the Monthly Fees shall be subject to the good faith negotiation process set forth in the Application and upon notice to the U.S. Trustee. For the avoidance of doubt, the \$35,000 monthly cap commencing after month 4 shall not be exceeded or otherwise accrue without Committee approval and notice to the U.S. Trustee.

8. As set forth in the Wu Declaration, Teneo shall file appropriate supplemental disclosure(s) with the Court to the extent that additional information concerning any connections is developed.

9. ~~6.~~ The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.