

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	
	)	Chapter 11
)	
WELDED CONSTRUCTION, L.P., <i>et al.</i>,	)	Case No. 18-12378 (KG)
)	
	)	Jointly Administered
)	
Debtors. ¹	)	Re: Docket Nos. 248, 275, 298

**CERTIFICATION OF COUNSEL REGARDING ORDER (A) GRANTING
(1) LUNDA CONSTRUCTION CO.’S MOTION FOR (I) A DETERMINATION
THAT THE AUTOMATIC STAY DOES NOT APPLY, OR, IN THE
ALTERNATIVE, (II) RELIEF FROM THE AUTOMATIC STAY, AND
(2) MOTION OF MACALLISTER MACHINERY CO., INC. FOR ENTRY
OF AN ORDER (I) DETERMINING THAT THE AUTOMATIC STAY
DOES NOT APPLY, OR, IN THE ALTERNATIVE, (II) MODIFYING THE
AUTOMATIC STAY; AND (B) CONFIRMING THAT THE STAY
DOES NOT APPLY FOR SIMILARLY SITUATED CREDITORS**

The undersigned hereby certifies as follows:

1. On November 19, 2018, Lunda Construction Co. filed *Lunda Construction Co.’s Motion for an Order (I) Determining that the Automatic Stay Does Not Apply, or, in the Alternative, (II) Granting Relief from the Automatic Stay* [Dkt. No. 248] (the “**Lunda Motion**”) with the Court, and on November 27, 2018, MacAllister Machinery Co., Inc. (together with Lunda, the “**Movants**”) filed the *Motion of MacAllister Machinery Co., Inc. for Entry of an Order (I) Determining that the Automatic Stay Does Not Apply, or, in the Alternative, (II) Modifying the Automatic Stay* [Dkt. No. 275] (the “**MacAllister Motion**”; and together with the

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.



Lunda Motion, the “**Motions**”).² Both Motions seek similar relief: (i) a determination that that the automatic stay does not apply to demands made or actions taken by the Movants directly against certain sureties, or, in the alternative, (ii) granting relief from the automatic stay to enable the Movants to take such actions.

2. Responses, if any, to the Lunda Motion were to be filed and served by no later than 4:00 p.m. (ET) on December 3, 2018, as extended for the Debtors (the “**Lunda Response Deadline**”), and, with respect to the MacAllister Motion, by no later than 4:00 p.m. (ET) on December 11, 2018 (the “**MacAllister Response Deadline**”).

3. Prior to the Lunda Response Deadline, the Movants received informal comments to both Motions (the “**Comments**”) from the Debtors, the Official Committee of Unsecured Creditors (the “**Committee**”), Ohio Machinery Co. and Cleveland Brothers Equipment Co., Inc. Additionally, on December 3, 2018, the Committee filed a reservation of rights (the “**Reservation of Rights**”) [Dkt. No 298] regarding the Lunda Motion. The Movants did not receive any other responses or objections to the Motions, and no other responses or objections appear on the docket in this case.

4. The Comments and the Reservation of Rights have been resolved by preparing a single form of proposed order (the “**Revised Order**”) ³ reflecting certain revisions requested by the Debtors, the Committee, Ohio Machinery Co. and Cleveland Brothers Equipment Co., Inc. At the request of the Debtors, the Revised Order grants the relief requested in both Motions, and also clarifies that the relief also applies to all similarly situated creditors. A

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motions.

³ Because neither the Debtors or the Committee, nor any other parties, dispute the Movants’ legal position that the automatic stay does not apply, the Movants submit that the Court may enter the Revised Order notwithstanding the pendency of the MacAllister Response Deadline.

copy of the Revised Order is attached hereto as Exhibit 1. For the convenience of the Court and all parties in interest, a blackline of the original proposed form of order attached to the Lunda Motion against the Revised Order is attached hereto as Exhibit 2 and a blackline of the original proposed form of order attached to the MacAllister Motion against the Revised Order is attached as Exhibit 3.

WHEREFORE, the Movants respectfully request that the Revised Order, substantially in the form attached hereto as Exhibit 1, be entered at the earliest convenience of the Court.

Dated: December 10, 2018
Wilmington, Delaware

/s/ Russell C. Silberglied

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- and -

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*Counsel to MacAllister
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Exhibit 1

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>,	)	Case No. 18-12378 (KG)
)	
	)	Jointly Administered
)	
Debtors. ¹	)	Re: Docket Nos. 248, 275, 298
)	

ORDER (A) GRANTING (I) LUNDA CONSTRUCTION CO.’S MOTION FOR (I) A DETERMINATION THAT THE AUTOMATIC STAY DOES NOT APPLY, OR, IN THE ALTERNATIVE, (II) RELIEF FROM THE AUTOMATIC STAY, AND (2) MOTION OF MACALLISTER MACHINERY CO., INC. FOR ENTRY OF AN ORDER (I) DETERMINING THAT THE AUTOMATIC STAY DOES NOT APPLY, OR, IN THE ALTERNATIVE, (II) MODIFYING THE AUTOMATIC STAY; AND (B) CONFIRMING THAT THE STAY DOES NOT APPLY FOR SIMILARLY SITUATED CREDITORS

Upon the motions (the “**Motions**”)² of Lunda Construction Co. (“**Lunda**”) [Dkt. No. 248] and MacAllister Machinery Co., Inc. (“**MacAllister**”; and together with Lunda, the “**Movants**”) [Dkt. No. 275] for entry of an order (i) determining that the automatic stay does not apply to any demand made, or action taken, by the Movants directly against the sureties under payment bonds obtained by the Debtors (the “**Bonds**”),³ or, in the alternative, (ii) granting relief from the automatic stay pursuant section 362(d) of the Bankruptcy Code to enable Movants to take such actions and waiving Bankruptcy Rule 4001(a)(3), all as more fully set forth in the Motions; and this Court having jurisdiction to consider the Motions and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference*

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 used but not otherwise defined herein shall have the meaning ascribed to such terms in the Motions.

³ The definition of “Bonds” includes, but is not limited to, the bond issued by Chubb in relation to the Williams/ASR Project and the bond issued by Berkshire in relation to the 2018 Consumers Project.

from the United States District Court for the District of Delaware dated February 29, 2012; and consideration of the Motions and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motions having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motions and the Official Committee of Unsecured Creditors' (the "**Committee**") reservation of rights with respect to the Lunda Motion [Dkt. No. 298]; and the Debtors and the Committee, and other parties in interest, having negotiated and consented to this form of order with Lunda and MacAllister; and this Court having determined that the legal and factual bases set forth in the Motions establish just cause for the relief granted herein; and it appearing that the relief granted in this Order is in the best interests of the Debtors, their estates, creditors, and all parties in interests; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motions are GRANTED as set forth herein.
2. The Debtors agree and this Court holds that the automatic stay imposed by section 362(a) of the Bankruptcy Code does not apply to any demand made or action taken by the Movants, or any similarly situated creditor, including but not limited to, Ohio Machinery Co. and Cleveland Brothers Equipment Co., Inc., directly and solely against the sureties under any Bonds, and any payment made by the sureties and received by the Movants, or any similarly situated creditor, including but not limited to, Ohio Machinery Co. and Cleveland Brothers Equipment Co., Inc., under any Bonds is not and shall not be considered property of the Debtors' estates.

3. The Movants, and any similarly situated creditor, including but not limited to, Ohio Machinery Co. and Cleveland Brothers Equipment Co., Inc., are hereby authorized to take any and all actions reasonably necessary to effectuate the terms of this Order.

4. The rights of the Debtors and the Committee with respect to (i) any claims the Debtors' estates may have against the sureties and/or project owners and/or (ii) defenses to any claims that such sureties and/or project owners may assert against the Debtors' estates are hereby reserved, and nothing in this Order prejudices such rights.

5. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: December ___, 2018
Wilmington, Delaware

THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

Exhibit 2

Blackline - Lunda Order

the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and consideration of the Motions and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motions having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and this Court having reviewed the ~~Motion~~Motions and the Official Committee of Unsecured Creditors' (the "Committee") reservation of rights with respect to the Lunda Motion [Dkt. No. 298]; and the Debtors and the Committee, and other parties in interest, having negotiated and consented to this form of order with Lunda and MacAllister; and this Court having determined that the legal and factual bases set forth in the Motions establish just cause for the relief granted herein; and it appearing that the relief ~~requested~~granted in ~~the Motion~~this Order is in the best interests of the Debtors, their estates, creditors, and all parties in interests; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The ~~Motion is~~Motions are GRANTED as set forth herein.
2. The Debtors agree and this Court holds that the automatic stay imposed by section 362(a) of the Bankruptcy Code does not apply to any demand made, ~~or action taken, by Lunda directly against Chubb under the Chubb Bond, and any payments made by Chubb and received by Lunda under the Chubb Bond~~ or action taken by the Movants, or any similarly situated creditor, including but not limited to, Ohio Machinery Co. and Cleveland Brothers Equipment Co., Inc., directly and solely against the sureties under any Bonds, and any payment made by the sureties and received by the Movants, or any similarly situated creditor, including but not limited

to, Ohio Machinery Co. and Cleveland Brothers Equipment Co., Inc., under any Bonds is not and shall not be considered property of the Debtors' estates.

~~3. In the alternative to the relief granted in paragraph 2 of this Order, for cause shown, the automatic stay of section 362(a) of the Bankruptcy Code is lifted and modified, pursuant to section 362(d) of the Bankruptcy Code, to allow Lunda to make demand, or take action, directly against Chubb under the Chubb Bond.~~

3. Lunda is ~~The Movants, and any similarly situated creditor, including but not limited to, Ohio Machinery Co. and Cleveland Brothers Equipment Co., Inc., are~~ hereby authorized to take any and all actions reasonably necessary to effectuate the terms of this Order.

~~5. Any stay imposed by Bankruptcy Rule 4001(a)(3) or otherwise, to the extent applicable, is hereby waived, and this Order shall be effective immediately upon its entry.~~

4. The rights of the Debtors and the Committee with respect to (i) any claims the Debtors' estates may have against the sureties and/or project owners and/or (ii) defenses to any claims that such sureties and/or project owners may assert against the Debtors' estates are hereby reserved, and nothing in this Order prejudices such rights.

5. ~~6.~~The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: December __, 2018
Wilmington, Delaware

THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

Exhibit 3

Blackline - MacAllister Order

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

<u>In re:</u>	)	<u>Chapter 11</u>
In re: WELDED CONSTRUCTION, L.P., <i>et al.</i> , [†])	Chapter 11
Debtors.	)	Case No. 18-12378 (KG)
	)	(Jointly Administered)
)	
<u>Debtors.</u> ¹	)	<u>Re: Docket Nos. 248, 275, 298</u>

ORDER (A) GRANTING ~~MACALLISTER MACHINERY CO., INC.’S (1) LUNDA CONSTRUCTION CO.’S~~ MOTION FOR (I) A DETERMINATION THAT THE AUTOMATIC STAY DOES NOT APPLY, ~~OR, IN THE ALTERNATIVE, (II) MODIFICATION OF OR, IN THE ALTERNATIVE, (II) RELIEF FROM THE AUTOMATIC STAY, AND (2) MOTION OF MACALLISTER MACHINERY CO., INC. FOR ENTRY OF AN ORDER (I) DETERMINING THAT THE AUTOMATIC STAY DOES NOT APPLY, OR, IN THE ALTERNATIVE, (II) MODIFYING THE AUTOMATIC STAY; AND (B) CONFIRMING THAT THE STAY DOES NOT APPLY FOR SIMILARLY SITUATED CREDITORS~~

Upon the motions (the “**Motions**”)² of Lunda Construction Co. (“Lunda”) [Dkt. No. 248] and MacAllister Machinery Co., Inc. (“MacAllister”; and together with Lunda, the “**Movants**”) [Dkt. No. 275] for entry of an order (i) determining that the automatic stay does not apply to any demand made, or action taken, by the Movants directly against the sureties under

[†] ~~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.~~

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² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Motions.

payment bonds obtained by the Debtors (the “Bonds”),³ or, in the alternative, (ii) granting relief from the automatic stay pursuant section 362(d) of the Bankruptcy Code to enable Movants to take such actions and waiving Bankruptcy Rule 4001(a)(3), all as more fully set forth in the Motions; and this Court having jurisdiction to consider the Motions and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated February 29, 2012; and consideration of the Motions and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motions having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motions and the Official Committee of Unsecured Creditors’ (the “Committee”) reservation of rights with respect to the Lunda Motion [Dkt. No. 298]; and the Debtors and the Committee, and other parties in interest, having negotiated and consented to this form of order with Lunda and MacAllister; and this Court having determined that the legal and factual bases set forth in the Motions establish just cause for the relief granted herein; and it appearing that the relief granted in this Order is in the best interests of the Debtors, their estates, creditors, and all parties in interests; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefore,

~~———— This matter having come before the Court on the Motion of MacAllister Machinery Co., Inc. for Entry of an Order (I) Determining that the Automatic Stay Does Not Apply, or, in the Alternative, (II) Modifying the Automatic Stay (the “Motion”; all capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion); the Court having~~

³ The definition of “Bonds” includes, but is not limited to, the bond issued by Chubb in relation to the Williams/ASR Project and the bond issued by Berkshire in relation to the 2018 Consumers Project.

~~reviewed the Motion and having heard the statements of counsel at a hearing before the Court; the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334 and (b) this is a core proceeding pursuant to 28 U.S.C. §157(b)(2); proper notice of the Motion having been provided to all parties entitled thereto, and no other or further notice being required, and the Court being otherwise fully advised in the premises;~~

IT IS HEREBY ORDERED THAT:

~~1. The Motion is hereby GRANTED.~~

1. The Motions are GRANTED as set forth herein.

~~2. Any objections to the Motion that have not been withdrawn or otherwise resolved are hereby OVERRULED.~~

2. ~~3.The~~ The Debtors agree and this Court holds that the automatic stay imposed by section 362(a) of the Bankruptcy Code does not apply to any demand made, or action taken by the Movants, by MacAllister or any similarly situated creditor, including but not limited to, Ohio Machinery Co. and Cleveland Brothers Equipment Co., Inc., directly and solely against the sureties under the any Bonds, and any payments received by MacAllister from the sureties under the Bonds, are payment made by the sureties and received by the Movants, or any similarly situated creditor, including but not limited to, Ohio Machinery Co. and Cleveland Brothers Equipment Co., Inc., under any Bonds is not and shall not be considered property of the Debtors' estates.

~~4. In the alternative to the relief granted in paragraph 2 of this Order, for cause shown, the automatic stay of section 362(a) of the Bankruptcy Code is lifted and modified, pursuant to section 362(d) of the Bankruptcy Code, to allow MacAllister to make demand, or take action, directly against the sureties under the Bonds.~~

3. ~~5. MacAllister is~~ The Movants, and any similarly situated creditor, including but not limited to, Ohio Machinery Co. and Cleveland Brothers Equipment Co., Inc., are hereby authorized to take any and all actions reasonably necessary to effectuate the terms of this Order.

~~6. Any stay imposed by Bankruptcy Rule 4001(a)(3) or otherwise, to the extent applicable, is hereby waived, and this Order shall be effective immediately upon its entry.~~

4. The rights of the Debtors and the Committee with respect to (i) any claims the Debtors' estates may have against the sureties and/or project owners and/or (ii) defenses to any claims that such sureties and/or project owners may assert against the Debtors' estates are hereby reserved, and nothing in this Order prejudices such rights.

5. ~~7. The Court shall retain jurisdiction to determine any disputes regarding, and to enforce the terms of,~~ with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: December __, 2018
Wilmington, Delaware

THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE