

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

In re:

WELDED CONSTRUCTION, L.P., *et al.*,

Debtors.¹

Chapter 11

Case No. 18-12378 (KG)

Jointly Administered

Re: Docket Nos. 248, 275, 298

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

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 11th, 2018
Wilmington, Delaware

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

KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE