

**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)

Hearing Date: March 13, 2019 at 10:00 a.m. (ET)

Objection Deadline: February 14, 2019 at 4:00 p.m. (ET)

Re: Docket No. 451

**LIMITED OBJECTION OF CATERPILLAR FINANCIAL SERVICES
CORPORATION TO DEBTORS' FOURTH OMNIBUS MOTION FOR
ENTRY OF AN ORDER, PURSUANT TO SECTIONS 105(a) AND 365(a)
OF THE BANKRUPTCY CODE, AUTHORIZING THE DEBTORS TO REJECT
CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS *NUNC PRO
TUNC TO THE REJECTION EFFECTIVE DATE***

Caterpillar Financial Services Corporation (“CFSC”), by and through its undersigned counsel, hereby submits this limited objection (the “Limited Objection”) to the *Debtors’ Fourth Omnibus Motion for Entry of an Order, Pursuant to Sections 105(a) and 365(a) of the Bankruptcy Code, Authorizing the Debtors to Reject Certain Unexpired Leases and Executory Contracts Nunc Pro Tunc to the Rejection Effective Date* [Docket No. 451] (the “Motion”). In support of this Limited Objection, CFSC respectfully states as follows:

PRELIMINARY STATEMENT²

1. CFSC does not oppose the relief sought by the Debtors in the Motion; provided, however, that the order granting the Motion clarify the Debtors’ obligation to return any Leased

¹The 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 All capitalized terms not otherwise defined herein shall have the meaning set forth in the Motion.

Equipment (hereinafter defined) to CFSC that is subject to a Rejected Contract. Further, CFSC has identified several inconsistencies in Schedule 1 to the Proposed Order, and requests that these errors be corrected.

BACKGROUND

The Equipment Leases

2. On or about August 31, 2016, Welded Construction and CFSC entered into a Master Finance Lease for the lease of eighty-one (81) pieces of equipment more fully described on numerous schedules to the Master Finance Lease (collectively, the “Master Finance Lease”).

3. On or about June 12, 2017, Welded Construction and CFSC entered into a Master Tax Lease for the lease of fifty-four (54) pieces of equipment more fully described on several schedules to the Master Tax Lease (collectively, the “Master Tax Lease”).

4. Pursuant to the Master Finance Lease and the Master Tax Lease (collectively, the “Leases”), Welded Construction leases a total of one hundred thirty five (135) pieces of equipment from CFSC (collectively, the “Leased Equipment”).

5. Out of an abundance of caution, CFSC filed protective UCC Financing Statements with the Delaware Secretary of State to provide notice to all creditors of its interests in the Leased Equipment.

6. The Leases are true leases and are not disguised secured financing arrangements. The Leased Equipment is property of CFSC.

7. Welded Construction is currently in breach of the Leases.

The Chapter 11 Cases

8. On October 22, 2018 (the “Petition Date”), the Debtors filed their Voluntary Petitions. As of the Petition Date, Welded Construction was, and remains, in arrears to CFSC in

the aggregate amount of \$2,001,973.46.

9. On January 31, 2018, the Debtors filed the Motion, seeking, *inter alia*, authority to reject certain unexpired leases of real or personal property and certain executory contracts. Included on the list of unexpired leases and executory contracts to be rejected as set forth on Schedule 1 to the Proposed Order are twenty five (25)³ unexpired leases or executory contracts for Leased Equipment in which CFSC is the lessor.

LIMITED OBJECTION

10. CFSC does not question the Debtors' business judgment to reject any of the Rejected Contracts. CFSC does, however, object to certain aspects of the proposed form of order to the Motion as set forth herein.

11. First, CFSC does not object to the *nunc pro tunc* relief requested in the Motion, provided that the Leased Equipment subject to a Rejected Contract (the "Rejected Equipment") is returned to CFSC prior to the entry of an order granting the Motion. If, however, a piece of Rejected Equipment is not returned prior to the hearing on the Motion, then the effective rejection date for the respective Rejected Contract should be the date that the Debtors return the Rejected Equipment to CFSC or, alternatively, CFSC takes possession of the Rejected Equipment.

12. Additionally, to the extent that any Rejected Equipment has not been returned to CFSC as of the date of the hearing on the Motion, CFSC requests that the following language be added to the Proposed Order:

To the extent all personal property, including equipment leased by the Debtors pursuant to a Rejected Contract (the "Rejected Property") is not returned to the non-Debtor party to a Rejected Contract on the Rejection Date, the Debtors shall secure the respective Rejected Property until it is returned to the non-Debtor party to such Rejected Contract; provided,

³ Schedule 1 to the Proposed Order identifies CFSC as the lessor of thirty one (31) pieces of equipment. As explained in paragraph 14 hereof, CFSC is not the lessor of six (6) pieces of equipment identified on Schedule 1 to the Proposed Order.

however, that the Debtors shall return the Rejected Property to the non-Debtor party to such Rejected Contract or, alternatively, make the Rejected Property available for such non-Debtor party to take possession of the respective Rejected Property, within five (5) days of the Court's entry of this Order.

13. Second, the serial numbers of four (4) pieces of equipment leased to the Debtors by CFSC are listed incorrectly on Schedule 1 to the Proposed Order. Schedule 1 identifies four (4) Caterpillar D8T Dozers with serial numbers FMC1116, FMC1118, FMC1128 and FMC1113. The Serial Numbers for these pieces of equipment are missing a digit. The serial numbers should be listed on Schedule 1 to the Proposed Order as FMC01116, FMC01118, FMC01128 and FMC01113. CFSC made the Debtors aware of this error and the Debtors advised CFSC that the four (4) serial numbers would be revised on the list of Rejected Contracts prior to the entry of an Order granting the Motion. To that end, at this juncture, CFSC reserves its rights to raise its objection to the Motion on this ground at or prior to the hearing to the extent that the serial numbers are not corrected on Schedule 1 to the Order.

14. Third, Schedule 1 to the Proposed Order incorrectly identifies CFSC as the lessor for six (6) unexpired leases and/or executory contracts (Caterpillar D6T Dozers – Serial Nos. KSB00452, KSB01364, KSB01426 KSB01300, KSB01425, KSB01360). CFSC is not the owner and lessor of these six (6) pieces of equipment. These six (6) leases expired on February 28, 2018 – well before the Petition Date. As such, CFSC is no longer the owner or lessor of these six (6) pieces of equipment and all six (6) of these Leases should be removed from the list of Rejected Contracts. CFSC advised the Debtors that the lessor was incorrectly identified and that CFSC sold these six (6) pieces of equipment prior to the Petition Date. To that end, CFSC reserves its rights to raise its objection to the Motion on this ground at or prior to the hearing to the extent that the six (6) leases identified above are included on Schedule 1 to the Order.

RESERVATION OF RIGHTS

15. CFSC reserves its right to supplement this Limited Objection (whether before or at the hearing on the Motion) to address additional issues raised in the Motion. CFSC further reserves all of its rights, claims, defenses, and remedies, including, without limitation, the right to amend, modify, or supplement this Limited Objection, to seek discovery, and to raise additional objections during the hearing on the Motion.

CONCLUSION

WHEREFORE, CFSC objects to entry of the current form of proposed order to the Motion and respectfully requests (A) that the Court grant the Motion only if it grants the relief requested in this Limited Objection and (B) that the Court grant such other relief as the Court deems just and proper.

Dated: February 11, 2019
Wilmington, Delaware

Respectfully submitted,

/s/ Stephen B. Gerald

Stephen B. Gerald (No. 5857)
WHITEFORD, TAYLOR & PRESTON LLC
The Renaissance Centre
405 North King Street, Suite 500
Wilmington, Delaware 19801
Telephone: (302) 353-4144
Facsimile: (410) 223-4178
Email: sgerald@wtplaw.com

Brandy M. Rapp, Esq.
WHITEFORD, TAYLOR & PRESTON L.L.P.
10 S. Jefferson Street, Suite 1110
Roanoke, Virginia 24011
Telephone: (540) 759-3577
Email: brapp@wtplaw.com

*Counsel for Caterpillar Financial Services
Corporation*

CERTIFICATE OF SERVICE

I, Stephen B. Gerald, do hereby certify that on February 11, 2019, I caused a copy of the foregoing **Limited Objection of Caterpillar Financial Services Corporation to Debtors' Fourth Omnibus Motion for Entry of an Order, Pursuant to Sections 105(a) and 365(a) of the Bankruptcy Code, Authorizing the Debtors to Reject Certain Unexpired Leases and Executory Contracts *Nunc Pro Tunc* to the Rejection Effective Date** to be served on the parties listed on the attached in the manner indicated.

/s/ Stephen B. Gerald
Stephen B. Gerald (No. 5857)

VIA FIRST CLASS MAIL

Andrew Myers, P.C.

T. Josh Judd
1885 Saint James Place, 15th Fl
Houston, TX 77056

VIA HAND DELIVERY

Ashby & Geddes, P.A.

William P. Bowden, Karen B. Skomorucha
Owens, Katharina Earle
500 Delaware Avenue 8th Floor
PO Box 1150
Wilmington, DE 19801

VIA HAND DELIVERY

Austria Shrum LLC

Matthew P. Austria
1201 N. Orange Street, Ste. 502
Wilmington, DE 19801

VIA HAND DELIVERY

Bayard, P.A.

Evan T. Miller
600 N. King Street, Suite 400
Wilmington, DE 19801

VIA HAND DELIVERY

Benesch, Friedlander, Coplan & Aronoff LLP

Jennifer R. Hoover; Kevin M. Capuzzi
222 Delaware Ave, Ste 801
Wilmington, DE 19801

VIA HAND DELIVERY

Bielli & Klauder, LLC

David M Klauder
1204 N King Street
Wilmington, DE 19801

VIA FIRST CLASS MAIL

Blank Rome LLP

John E. Lucian, Michael B. Schaedle
One Logan Square
130 North 18th Street
Philadelphia, PA 19103

VIA HAND DELIVERY

Blank Rome LLP

Jose F. Bibiloni, Josef W. Mintz
1201 N. Market Street, Suite 800
Wilmington, DE 19801

VIA FIRST CLASS MAIL

Blumling & Gusky, LLP

Sharon M. Menchyk, David A. Levine
1200 Koppers Building
Pittsburgh, PA 15219

VIA FIRST CLASS MAIL

Bodman PLC

Robert J. Diehl, Jr., Jaimee L. Witten
1901 St. Antoine Street, 6th Floor at Ford Field
Detroit, MI 48226

VIA FIRST CLASS MAIL

Buchalter, A Professional Corporation

Shawn M. Christianson
55 Second Street, 17th Floor
San Francisco, CA 94105-3493

VIA HAND DELIVERY

Buchanan Ingersoll & Rooney PC

Mary F. Caloway
919 North Market Street, Suite 1500
Wilmington, DE 19801

VIA HAND DELIVERY

Burr & Forman LLP

Richard A. Robinson & J. Cory Falgowski
1201 N. Market Street, Suite 1407
Wilmington, DE 19801

VIA FIRST CLASS MAIL

Caldwell East & Finlayson PLLC

Zachary J Fanucchi, G. Wade Caldwell
700 N St Mary's Street, Suite 1825
San Antonio, TX 78205

VIA FIRST CLASS MAIL

Central States Funds

Caitlin M. McNulty
9377 W. Higgins Road
Rosemont, IL 60018

VIA FIRST CLASS MAIL

Chiesa Shahinian & Giantomasi PC

Scott A. Zuber & Jonathan Bondy
One Boland Drive
West Orange, NJ 07052

VIA FIRST CLASS MAIL

Cleveland Brothers Equipment Co., Inc.

Attn David Hough
4565 William Penn Highway
Murrysville, PA 15668

VIA HAND DELIVERY

Cooch and Taylor, P.A.

R Grant Dick IV, Dean R. Roland
The Brandywine Building
1000 West Street, 10th Floor
Wilmington, DE 19801

VIA HAND DELIVERY

Cozen O'Connor

John T. Carroll, III
1201 N. Market Street, Ste 1001
Wilmington, DE 19801

VIA HAND DELIVERY

Delaware Attorney General

Matthew Denn
Carvel State Office Building
820 N French St
Wilmington, DE 19801

VIA HAND DELIVERY

Delaware Dept of Justice

Attn Bankruptcy Dept
820 N French St 6th Fl
Wilmington, DE 19801

VIA FIRST CLASS MAIL

Delaware Secretary of State

Franchise Tax
401 Federal Street
PO Box 898
Dover, DE 19903

VIA FIRST CLASS MAIL

Delaware State Treasury

820 Silver Lake Blvd., Suite 100
Dover, DE 19904

VIA HAND DELIVERY

Duane Morris LLP

Drew S. McGehrin
222 Delaware Avenue, Suite 1600
Wilmington, DE 19801

VIA FIRST CLASS MAIL

Duane Morris LLP

Wendy M. Simkulak, Catherine B. Heitzenrater
30 South 17th Street
Philadelphia, PA 19103

VIA FIRST CLASS MAIL

Earth Pipeline Services, Inc.

Attn Joshua Roberts
135 Technology Drive Suite 100
Canonsburg, PA 15317

VIA HAND DELIVERY

Fineman Krekstein & Harris PC

Deirdre M. Richards
1300 N. King Street
Wilmington, DE 19801

VIA FIRST CLASS MAIL

Fredrikson & Byron, P.A.

Ryan Murphy, Samuel Andre
200 South Sixth Street, Ste. 4000
Minneapolis, MN 55402-1425

VIA HAND DELIVERY

Gellert Scali Busenkell & Brown, LLC

Michael Busenkell
1201 North Orange Street, Suite 300
Wilmington, DE 19801

VIA FIRST CLASS MAIL

Gibson, Dunn & Crutcher LLP

Daniel B. Denny
333 South Grand Avenue
Los Angeles, CA 90071

VIA FIRST CLASS MAIL

Gibson, Dunn & Crutcher LLP

Matthew K. Kelsey, Michael A. Rosenthal, J. Eric
Wise
200 Park Avenue
New York, NY 10166-0193

VIA FIRST CLASS MAIL

Gordon & Rees LLP

Jeffrey D. Cawdrey, Shelby A. Poteet
101 W. Broadway, Suite 2000
San Diego, CA 92101

VIA FIRST CLASS MAIL

Hall Estill

Steven Soulé, John F. Heil, III
320 South Boston Avenue, Ste 200
Tulsa, OK 74103-3706

VIA FIRST CLASS MAIL

Hinckley, Allen, & Snyder LLP

Jennifer V. Doran, Esq.
28 State St
Boston, MA 02109

VIA HAND DELIVERY

Hogan McDaniel

Daniel C. Kerrick
1311 Delaware Avenue
Wilmington, DE 19806

VIA FIRST CLASS MAIL

Honigman Miller Schwartz and Cohn LLP

E Todd Sable
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226

VIA FIRST CLASS MAIL

Honigman Miller Schwartz and Cohn LLP

Lawrence A Lichtman
2290 First National Building
660 Woodward Avenue
Detroit, MI 48226

VIA FIRST CLASS MAIL

Internal Revenue Service

Attn Susanne Larson
31 Hopkins Plz Rm 1150
Baltimore, MD 21201

VIA FIRST CLASS MAIL

Internal Revenue Service

Centralized Insolvency Operation
PO Box 7346
Philadelphia, PA 19101-7346

VIA FIRST CLASS MAIL

Internal Revenue Service

Centralized Insolvency Operation
2970 Market St
Philadelphia, PA 19104

VIA FIRST CLASS MAIL

**IUOE and Pipe Line Employers Health &
Welfare Fund**

Attn Richard Hopp, National Pipeline Training
Fund
10440 Little Patuxent Parkway, Suite 700
Columbia, MD 21044

VIA FIRST CLASS MAIL

James Louis Hordern Jr.

730 N. Post Oak Ste 100
Houston, TX 77024

VIA FIRST CLASS MAIL

KCC

Leanne Rehder Scott
2335 Alaska Ave
El Segundo, CA 90245

VIA FIRST CLASS MAIL

Maddin, Hauser, Roth & Heller, P.C.

Craig E Zucker, David M Eisenberg
28400 Northwestern Highway
2nd Floor Essex Centre
Southfield, MI 48034

VIA FIRST CLASS MAIL

Mayer Brown LLP

Charles S. Kelley, Andrew C. Elkhoury
700 Louisiana St., Suite 3400
Houston, TX 77002

VIA FIRST CLASS MAIL

Mayer Brown LLP

Tyler R. Ferguson
71 South Wacker Drive
Chicago, IL 60606

VIA HAND DELIVERY

McElroy, Deutsch, Mulvaney & Carpenter, LLP

Gary D. Bressler
300 Delaware Avenue, Suite 770
Wilmington, DE 19801

VIA FIRST CLASS MAIL

McElroy, Deutsch, Mulvaney & Carpenter, LLP

Michael Morano
1300 Mount Kemble Ave
Morristown, NJ 07960

VIA FIRST CLASS MAIL

McMahon Surovik Suttle, PC

Jessica Haile
400 Pine Street, Ste. 800
Abilene, TX 79601

VIA HAND DELIVERY

Morris James LLP

Carl N Kunz, III
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801

VIA HAND DELIVERY

Morris James LLP

Stephen M. Miller
500 Delaware Avenue, Suite 1500
P.O. Box 2306
Wilmington, DE 19899-2306

VIA HAND DELIVERY

Morris, Nichols, Arsht & Tunnell LLP

Robert J. Dehney, Joseph C. Barsalona II
1201 N. Market St., 16th Fl
P.O. Box 1347
Wilmington, DE 19899-1347

VIA FIRST CLASS MAIL

Office of Attorney General

Denise A. Kuhn, Senior Deputy Attorney General
1600 Arch Street, Suite 300
The Phoenix Building
Philadelphia, PA 19103

VIA HAND DELIVERY

Office of the United States Trustee Delaware

Jackie Weissberger and Jane Leamy
844 King St Ste 2207
Lockbox 35
Wilmington, DE 19899-0035

VIA FIRST CLASS MAIL

Ohio Machinery Co.

Attn Curtis Keal
3993 E. Royalton Road
Broadview Heights, OH 44147

VIA FIRST CLASS MAIL

PipeLine Machinery International, LP

Attn Ted Hill
15434 Cypress N. Houston
Cypress, TX 77429

VIA FIRST CLASS MAIL

Quarles & Brady LLP

Faye B. Feinstein, Christopher Combest, Lauren
Beslow
300 N. LaSalle Street, Ste 4000
Chicago, IL 60654-3406

VIA HAND DELIVERY

Reed Smith LLP

Kurt F. Gwynne, Katelin A. Morales
1201 N. Market Street, Suite 1500
Wilmington, DE 19801

VIA HAND DELIVERY

Richards, Layton & Finger, P.A.

Russell C. Silberglied, Brett M. Haywood, Travis
J. Cuomo
One Rodney Square
920 North King Street
Wilmington, DE 19801

VIA FIRST CLASS MAIL

Securities & Exchange Commission

G Jeffrey Boujoukos Regional Director
1617 JFK Boulevard Ste 520
Philadelphia, PA 19103

VIA FIRST CLASS MAIL

Spector & Johnson, PLLC

Howard Marc Spector
12770 Coit Road, Suite 1100
Dallas, TX 75251

VIA FIRST CLASS MAIL

United Piping, Inc

Attn Mel Olson
4510 Airport Road
Duluth, MN 55811

VIA HAND DELIVERY

Young Conaway Stargatt & Taylor, LLP

M. Blake Cleary, Sean M. Beach, Justin H. Rucki,
Tara C. Pakrouh, Betsy L. Feldman
Rodney Square, 1000 North King Street
Wilmington, DE 19801

VIA HAND DELIVERY

Saul Ewing Arnstein & Lehr LLP

Lucian B. Murley
1201 N. Market Street, Suite 2300
P.O. Box 1266
Wilmington, DE 19899

VIA FIRST CLASS MAIL

Securities & Exchange Commission

Secretary of the Treasury
100 F St NE
Washington, DC 20549

VIA HAND DELIVERY

Sullivan Hazeltime Allinson LLC

William D. Sullivan
901 North Market Street, Suite 1300
Wilmington, DE 19801

VIA HAND DELIVERY

US Attorney for Delaware

David C Weiss c/o Ellen Slights
1007 Orange St Ste 700
PO Box 2046
Wilmington, DE 19899-2046

VIA FIRST CLASS MAIL

Schmid Pipeline

Attn Daniel Langdon
242 Carlton Avenue SE
Grand Rapids, MI 49506

VIA FIRST CLASS MAIL

Securities & Exchange Commission NY Office

Andrew Calamari Regional Director
Brookfield Place
200 Vesey St, Ste 400
New York, NY 10281-1022

VIA FIRST CLASS MAIL

Tucker Arensberg, P.C.

Jillian Nolan Snider, Neil J. Gregorio
1500 One PPG Place
Pittsburgh, PA 15222

VIA FIRST CLASS MAIL

Welded Construction, L.P. and Welded

Construction Michigan, LLC

26933 Eckel Road
Perrysburg, OH 43551

VIA FIRST CLASS MAIL

Wolcott Rivers Gates

Cullen D. Speckhart
919 E Main St, Ste 2010
Richmond, VA 23219