

INTRODUCTION

1. Section 1121(b) of the Bankruptcy Code provides for an initial period of one hundred twenty (120) days after the commencement of a chapter 11 case during which the debtor has the exclusive right to file a chapter 11 plan (the “**Exclusive Filing Period**”). Furthermore, section 1121(c)(3) of the Bankruptcy Code provides that if the debtor files a plan within the Exclusive Filing Period, the debtor has an exclusive period of one hundred eighty (180) days from the commencement of the chapter 11 case to solicit acceptances of and confirm such a plan (the “**Exclusive Solicitation Period**,” and together with the Exclusive Filing Period, the “**Exclusive Periods**”). The initial Exclusive Filing Period in these chapter 11 cases extends through and including February 19, 2019, while the initial Exclusive Solicitation Period extends through and including April 22, 2019.²

2. Section 1121(d) of the Bankruptcy Code permits the Court to extend the Exclusive Periods “for cause.” By this Motion, the Debtors request that (i) the Exclusive Filing Period be extended by ninety (90) days, through and including May 20, 2019, and (ii) the Exclusive Solicitation Period also be extended by approximately ninety (90) days, through and including July 22, 2019, pursuant to section 1121(d) of the Bankruptcy Code. For the reasons set forth herein, the Debtors submit that ample “cause” exists to grant such extensions.

JURISDICTION AND VENUE

3. The Court has jurisdiction over these chapter 11 cases and this Motion 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 as of February 29, 2012 (the “**Amended Standing Order**”). This is a core proceeding pursuant to 28 U.S.C. § 157(b) and

² The 180th day after the Petition Date (as defined below) is April 20, 2019, which is a Saturday, so pursuant to the Bankruptcy Rules, the Exclusive Solicitation Period automatically extends to the first business day after such date, which is Monday, April 22, 2019.

this is a proceeding for which the Court may enter a final order under Article III of the U.S. Constitution. Venue of these chapter 11 cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory and legal predicates for the relief requested herein are section 1121(d) of the Bankruptcy Code, Bankruptcy Rule 9006(b), and Local Rule 9006-2.

BACKGROUND

5. On October 22, 2018 (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner. An official committee of unsecured creditors (the “**Committee**”) was appointed on October 30, 2018.

6. Additional information regarding the Debtors’ businesses, capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the *Declaration of Frank Pometti in Support of Debtors’ Chapter 11 Petitions and First-Day Motions* [Docket No. 4].

RELIEF REQUESTED

7. By this Motion, the Debtors request the Court to enter the Proposed Order, pursuant to section 1121(d) of the Bankruptcy Code, extending (i) the Exclusive Filing Period through and including May 20, 2019, and (ii) the Exclusive Solicitation Period through and including July 22, 2019.³ The Debtors further request that entry of the Proposed Order be without prejudice to the Debtors’ rights to seek additional extensions of the Exclusive Periods.

³ The Debtors have filed this Motion with the intent of it being heard at the March 13, 2019 omnibus hearing, which is scheduled to take place after the expiration of the Exclusive Filing Period. Pursuant to Local Rule

BASIS FOR RELIEF

8. The exclusive periods under section 1121(d) of the Bankruptcy Code are intended to afford the debtor a full and fair opportunity to formulate and propose a chapter 11 plan and to solicit acceptances thereof without the disruption that might be caused by the filing of competing plans of reorganization by non-debtor parties. To this end, where the exclusive periods prove to be unfeasible timeframes, section 1121(d) of the Bankruptcy Code allows the Court to extend such exclusive periods for “cause”:

(1) Subject to paragraph (2), on request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.

11 U.S.C. § 1121(d).

A. Section 1121(d) of the Bankruptcy Code Permits the Court to Extend the Exclusive Periods for “Cause”

9. It is well established that the decision to extend a debtor’s exclusive periods is committed to the sound discretion of the Court and should be based upon the facts and circumstances of a particular case. See First Am. Bank of New York v. Southwest Gloves and Safety Equip., Inc., 64 B.R. 963, 965 (D. Del. 1986); 203 N. LaSalle Street P’ship v. Bank of Am., N.A., 1999 U.S. Dist. LEXIS 19425, at *12 (N.D. Ill. 1999); In re Mid-State Raceway, Inc., 323 B.R. 63, 68 (Bankr. N.D.N.Y. 2005); In re Reetz, 61 B.R. 412, 414 (Bankr. W.D. Wis.

9006-2, the Exclusive Filing Period is automatically extended until the Court has had an opportunity to consider the relief requested in this Motion.

1986). Although the Bankruptcy Code does not define “cause” for purposes of an extension request under section 1121(d), courts have looked to the legislative history of section 1121(d) for guidance. See In re Gibson & Cushman Dredging Corp., 101 B.R. 405, 409 (E.D.N.Y. 1989); In re Amko Plastics, Inc., 197 B.R. 74, 77 (Bankr. S.D. Ohio 1996). Such legislative history indicates that Congress did not intend that the 120- and 180-day exclusive periods be a hard and fast limit. See Amko Plastics, Inc., 197 B.R. at 77 (noting that Congress intended courts to have flexibility in dealing with extensions of exclusivity); Gaines v. Perkins (In re Perkins), 71 B.R. 294, 297 (W.D. Tenn. 1987) (“The hallmark of [section 1121(d)] is flexibility.”). Rather, Congress intended that the debtor’s exclusive periods be of an adequate length, given the circumstances, for a debtor to formulate, negotiate and draft a viable plan without the disruptions that would occur with the filing of competing plans of reorganization. See Geriatrics Nursing Home v. First Fidelity Bank, N.A., 187 B.R. 128, 133 (D.N.J. 1995) (“The opportunity to negotiate its plan unimpaired by competition, the court held, is meant to allow the debtor time to satisfy all creditors and win support for its restructuring scheme and thus ensure its survival as a business.”). Further, Congress recognized that often a one hundred twenty (120) day exclusive period will not afford a debtor sufficient time to formulate and negotiate a chapter 11 plan:

[t]he court is given the power, though, to increase . . . the 120-day period depending on the circumstances of the case. [T]he bill allows the flexibility for individual cases that is not available today. For example, if an unusually large company were to seek reorganization under chapter 11, the Court would probably need to extend the time in order to allow the debtor to reach an agreement.

H.R. Rep. No. 95-595, 95th Cong. 1st Sess. 232 (1977) (footnotes omitted); see also In re Amko Plastics, 197 B.R. at 77 (noting that Congress intended courts to have flexibility in dealing with extensions of exclusivity); Gaines, 71 B.R. at 297.

10. Factors considered by the courts in deciding whether cause exists to grant an extension of the exclusive periods include: (a) the size of the debtor and difficulty in formulating a plan; (b) the necessity of sufficient time to negotiate a plan and prepare adequate information to allow a creditor to determine whether to accept the plan; (c) the existence of good faith progress toward reorganization; (d) whether the debtor is paying its debts as they come due; (e) whether the debtor has demonstrated reasonable prospects for filing a viable plan; (f) whether the debtor has made progress in negotiating with creditors; (g) the length of time the case has been pending; (h) whether the debtor is seeking the extension to pressure creditors to submit to its demands; and (i) whether unresolved contingencies exist. In re Dow Corning Corp., 208 B.R. 661, 664–65 (Bankr. E.D. Mich. 1997); In re Adelphia Commc'ns Corp., 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006); In re Cent. Jersey Airport Servs., LLC, 282 B.R. 176, 184 (Bankr. D.N.J. 2002).

11. Not all of the above factors are necessary or relevant in determining whether to grant an extension of the exclusivity periods. See, e.g., In re Express One Int'l, Inc., 194 B.R. 98, 100–01 (Bankr. E.D. Tex. 1996) (identifying only four of the factors as relevant in determining whether cause exists to support an extension); In re United Press Int'l, Inc., 60 B.R. 265, 269 (Bankr. D.D.C. 1986) (finding cause to extend exclusivity based on three of the factors). Here, however, nearly all of the factors are relevant and are in favor of extending the Exclusive Periods. As explained more fully below, sufficient cause exists to extend the Debtors' Exclusive Periods pursuant to section 1121(d) of the Bankruptcy Code.

B. Cause Exists For an Extension of the Debtors' Exclusive Periods in These Cases

12. The Debtors have been operating under the protections of chapter 11 for under four (4) months. During this short period of time, the Debtors have worked diligently to

ensure the smooth transition of the Debtors' operations into chapter 11, and to preserve and maximize the value of the Debtors' estates for the benefit of all stakeholders. To that end, the Debtors have, among other things:

(i) reached agreements with customers to fund and complete ongoing construction projects;

(ii) reconciled a substantial number of invoices and payments with respect to unpaid vendors, contractors, and other similarly situated entities to ensure continued and uninterrupted operation of the Debtors' business, and to resolve a significant amount of prepetition claims against the Debtors' estates;

(iii) completed pipeline construction on the Debtors' active construction projects;

(iv) retained professional advisors;

(v) filed their Schedules of Assets and Liabilities and Statements of Financial Affairs;

(vi) established a claims bar date for pre-petition claims and claims pursuant to section 503(b)(9) of the Bankruptcy Code;

(vii) evaluated and resolved requests for additional adequate assurance of future payment from certain utility providers;

(viii) evaluated certain of the Debtors' executory contracts and unexpired leases and rejected, among other things, more than 1,500 pieces of equipment and various real property leases;

(ix) established procedures for the sale of certain miscellaneous assets and obtained Court approval of, and subsequently closed, a number of miscellaneous assets;

(x) successfully prosecuted their contested motion for entry of an order approving their key employee incentive and retention plans;

(xi) resolved, in a timely and efficient manner, a number of issues that threatened to jeopardize the Debtors' ongoing business operations and chapter 11 efforts;

(xii) resolved various objections to entry of a final order authorizing the Debtors to obtain post-petition financing and use cash collateral, and subsequently obtained entry of such order; and

(xiii) handled various other tasks related to the administration of the Debtors' bankruptcy estates and these chapter 11 cases, including responding to numerous inquiries from creditors and interested parties.

13. Finally, since their appointment, the Debtors have worked closely with the Committee on these chapter 11 cases, responded to a number of the Committee's diligence and informal discovery requests, and worked with the Committee regarding various significant matters in these chapter 11 cases.

14. Accomplishing these tasks within less than four (4) months has been a labor-intensive process, fully occupying the Debtors' representatives and professionals. In light of these circumstances, the Debtors submit that the requested extensions are both appropriate and necessary to afford the Debtors with sufficient time to adequately prepare a viable chapter 11 plan and related disclosure statement.

(i) ***The Size, Complexity, and Duration of the Debtors' Cases Necessitates an Extension of the Debtors' Exclusive Periods.***

15. Congress and the courts have recognized that the size and complexity of a debtor's case alone may constitute cause for extension of a debtor's exclusive period to file a plan and solicit acceptances of such a plan. H.R. No. 95-595, at 231-232,406 (1978), reprinted

in 1978 U.S.C.C.A.N. 5787, 6191, 6362 (“[I]f an unusually large company were to seek reorganization under chapter 11, the court would probably need to extend the time in order to allow the debtor to reach an agreement”); see also In re Texaco, Inc., 76 B.R. 322, 326 (Bankr. S.D.N.Y. 1987) (“The large size of the debtor and the consequent difficulty in formulating a plan of reorganization for a huge debtor with a complex financial structure are important factors which generally constitute cause for extending the exclusivity periods.”).

16. The Debtors’ chapter 11 cases are sufficiently large and complex to warrant the requested extension of the Exclusive Periods. As of the Petition Date, the Debtors were a mainline pipeline construction contractor capable of executing pipeline construction projects in lengths ranging from a few hundred feet to over 200 miles. As discussed above, since the Petition Date, the Debtors have obtained approval to enter into agreements with customers to fund ongoing construction projects and related costs, as well as to satisfy certain claims of related sub-contractors. With this relief, the Debtors have focused a significant amount of their post-petition efforts on completing the projects, negotiating and completing hundreds of creditor claim settlements and satisfying certain related obligations, as well as resolving a number of related disputes and issues. At the same, among other things, the Debtors have obtained approval for and closed on sales of miscellaneous assets, have worked with their post-petition lenders and the Committee to determine the appropriate manner for the completion of these chapter 11 cases and monetize the value of the Debtors’ assets, and have continued to review their remaining equipment, and where appropriate, reject any equipment that is unnecessary to their business operations and the prosecution of these chapter 11 cases.

17. Put simply, during the less than four (4) months since the commencement of these chapter 11 cases, the Debtors have devoted substantially all of their resources to

preserving and maximizing the value of their estates and ensuring a smooth transition of the Debtors' operations into chapter 11. In light of the fact that these cases have only been pending for a short period of time, the Debtors respectfully submit that the size, complexity, and duration of these cases weigh in favor of allowing the Debtors to extend the Exclusive Periods.

(ii) *The Debtors Have Shown Good Faith Progress in These Chapter 11 Cases.*

18. The requested extension is reasonable given the Debtors' progress to date and the current posture of these chapter 11 cases. As demonstrated above, since the Petition Date, the Debtors, their management, and their professional advisors have worked diligently to preserve and maximize the value of the Debtors' estates for the benefit of all stakeholders, and have already begun to focus their efforts on determining the appropriate process by which to conclude these chapter 11 cases in an orderly and efficient manner.

19. At this stage, an extension of the Exclusive Periods will allow the Debtors to likely negotiate a chapter 11 plan, while continuing to devote the necessary resources towards maximizing the value of the Debtors' estates, including, where appropriate, identifying and marketing assets for sale and rejecting additional executory contracts and unexpired leases. The Debtors' current progress towards successfully prosecuting these chapter 11 cases justifies the requested extension of the Exclusive Periods.

(iii) *The Debtors Are Paying Their Debts as They Come Due.*

20. Subject to their rights under section 365(d)(5) of the Bankruptcy Code with respect to unexpired leases of personal property, the Debtors generally continue to timely pay their undisputed postpetition obligations. As such, the requested extension of the Exclusive Periods will afford the Debtors a meaningful opportunity to attempt to negotiate, formulate, and confirm a chapter 11 plan without prejudice to the parties in interest in these chapter 11 cases.

(iv) *An Extension of the Exclusive Periods Will Not Prejudice the Debtors' Creditors.*

21. Throughout the chapter 11 process, the Debtors have endeavored to establish and maintain cooperative working relationships with their primary creditor constituencies, including their post-petition lenders, the Committee, customers and significant equipment vendors, and believe that these relationships will continue during the extension requested herein. Importantly, the Debtors are not seeking the extension to delay administration of these chapter 11 cases or to exert pressure on their creditors, but rather to continue the orderly, efficient, and cost-effective chapter 11 process. The Debtors' engagement with these parties therefore weighs in favor of the requested extension of the Exclusive Periods.

(v) *Additional Factors Exist to Support an Extension of the Exclusive Periods.*

22. In addition to the factors discussed above, termination of the Exclusive Periods would adversely impact the Debtors' operations and progress in these chapter 11 cases. Simply put, if the Court were to deny the Debtors' request for an extension of the Exclusive Periods, upon the expiration of the Exclusive Filing Period, any party in interest would be free to propose a plan for the Debtors and solicit acceptances thereof. Such a ruling could foster a chaotic environment for the Debtors and their estates, significantly delay these chapter 11 cases, and otherwise impair the Debtors' ability to successfully prosecute these chapter 11 cases, without any corresponding benefit to the Debtors' estates, creditors, employees, customers, and other stakeholders. Indeed, denying the relief requested herein could very well thwart the rehabilitative objectives of the chapter 11 process.

23. Based on the foregoing, the Debtors respectfully submit that cause exists, pursuant to section 1121(d) of the Bankruptcy Code, for the Court to extend the Exclusive Filing

Period through and including May 20, 2019, and the Exclusive Solicitation Period through and including July 22, 2019.

NOTICE

24. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Committee; (iii) counsel to the Debtors' post-petition lenders; and (iv) all parties who, as of the filing of this Motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

25. No prior motion for the relief requested herein has been made to this or any other court.

CONCLUSION

WHEREFORE, the Debtors request the Court enter the Proposed Order, granting the relief requested herein and such other and further relief as is just and proper.

Dated: February 15, 2019
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Betsy L. Feldman

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Counsel to the Debtors

**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)
)
) **Hearing Date:**
) **March 13, 2019 at 10:00 a.m. (ET)**
)
) **Objection Deadline:**
) **March 1, 2019 at 4:00 p.m. (ET)**

NOTICE OF MOTION

TO: (I) THE OFFICE OF THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE; (II) COUNSEL TO THE COMMITTEE; (III) COUNSEL TO THE DEBTORS' POST-PETITION LENDERS; (AND (IV) ALL PARTIES WHO, AS OF THE FILING OF THE MOTION, HAVE FILED A NOTICE OF APPEARANCE AND REQUEST FOR SERVICE OF PAPERS PURSUANT TO BANKRUPTCY RULE 2002.

PLEASE TAKE NOTICE that the above captioned debtors and debtors in possession (together, the "**Debtors**") have filed the *Debtors' Motion for an Order, Pursuant to Section 1121(d) of the Bankruptcy Code, Extending the Exclusive Periods Within Which the Debtors May File a Chapter 11 Plan and Solicit Acceptances Thereof* (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that any objections or responses to the relief requested in the Motion must be filed on or before **March 1, 2019 at 4:00 p.m. (ET)** (the "**Objection Deadline**") with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, copies of any responses or objections to the Motion must be served upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON MARCH 13, 2019 AT 10:00 A.M. (ET) BEFORE THE HONORABLE KEVIN GROSS IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 6TH FLOOR, COURTROOM NO. 3, WILMINGTON, DELAWARE 19801.

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.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS OR RESPONSES TO THE MOTION ARE TIMELY FILED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED THEREIN WITHOUT FURTHER NOTICE OR A HEARING.

Dated: February 15, 2019
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Betsy L. Feldman

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Counsel to the Debtors

EXHIBIT A

Proposed Order

**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. _____

**ORDER, PURSUANT TO SECTION 1121(d) OF THE BANKRUPTCY CODE,
EXTENDING THE EXCLUSIVE PERIODS WITHIN WHICH THE DEBTORS MAY
FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF**

Upon consideration of the motion (the “**Motion**”)² of the Debtors for entry of an order, pursuant to section 1121(d) of the Bankruptcy Code, Bankruptcy Rule 9006, and Local Rule 9006-2, extending the Debtors’ exclusive periods to file a chapter 11 plan or plans and to solicit acceptances of such plan(s); and upon consideration of all pleadings related thereto; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and their creditors; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED 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 used but not defined herein shall have the meaning ascribed to such terms in the Motion.

1. The Motion is GRANTED to the extent provided herein.
2. The Debtors' Exclusive Filing Period shall be extended through and including May 20, 2019.
3. The Debtors' Exclusive Solicitation Period shall be extended through and including July 22, 2019.
4. The entry of this Order shall be without prejudice to the rights of the Debtors and their estates to seek further extensions of the Exclusive Periods or to seek other appropriate relief.
5. This Court shall retain jurisdiction with respect to all matters arising from or relating to the implementation of this Order.