Docket #0648 Date Filed: 04/17/2019

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
WELDED CONSTRUCTION, L.P., *et al.*,[1]	)	Case No. 18-12378 (KG)
	)	(Jointly Administered)
Debtors.	)	
	)	**Ref. Docket No. 581**

DECLARATION OF FRANK A. POMETTI IN SUPPORT OF MOTION OF DEBTORS FOR ORDER UNDER 11 U.S.C. §§ 105(a), 363, AND 364, FED. R. BANKR. P. 2002 AND 6004 AND DEL. BANKR. L.R. 2002-1, 6004-1, AND 9006-1 AUTHORIZING (A) THE SALE OF CERTAIN ASSETS OF THE DEBTORS FREE AND CLEAR OF ALL CLAIMS, LIENS, LIABILITIES, RIGHTS, INTERESTS AND ENCUMBRANCES; (B) THE DEBTORS TO ENTER INTO AND PERFORM THEIR OBLIGATIONS UNDER THE AGENCY AGREEMENT; AND (C) RELATED RELIEF

Pursuant to 28 U.S.C. § 1746, I, Frank A. Pometti, hereby submit this declaration (this "**Declaration**") under penalty of perjury:

1. I am the Chief Restructuring Officer of the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**"). In this capacity, I am familiar with the Debtors' day-to-day operations, businesses, financial affairs, and books and records.

2. I submit this Declaration in support of the Debtors' motion [D.I. 581] (the "**Sale Motion**")[2] for an order authorizing, among other things, (a) the private Sale of the Assets free and clear of all Encumbrances in accordance with the Agency Agreement; (b) the Debtors to enter into and perform their obligations under the Agency Agreement; and (c) related relief.

[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 meanings ascribed to them in the Sale Motion.

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3. The facts set forth in this Declaration are based upon my personal knowledge, information and belief, my review of relevant documents or my opinion based upon experience, knowledge and information concerning the Debtors, and upon information supplied to me by the Debtors' advisors. If called as a witness, I could and would testify competently to the facts set forth herein.

A. The Marketing Process

4. The Debtors, with the assistance of AlixPartners, and in consultation with their bankruptcy counsel, Young Conaway Stargatt & Taylor, LLP, investigated and analyzed a number of strategies to preserve and maximize the value of the Debtors' assets. As a result of this investigation and analysis, the Debtors concluded that, under the circumstances of these chapter 11 cases, the best way to maximize the value of their assets was to conduct an orderly sale process for their equipment and similar assets with the assistance of an experienced professional liquidator and auctioneer.

5. As a result, in December 2018, the Debtors commenced a nearly three-month competitive process to market their assets, solicit proposals and select a proposal(s) that would facilitate the Debtors' goal of maximizing the value of the assets. Specifically, the Debtors, with the assistance of AlixPartners, identified parties likely to have an interest in the assets and in marketing the assets, but with the requisite experience and capabilities to unlock the greatest amount of value through a liquidation and auction process. The Debtors then prepared a data room, and actively marketed and solicited bids from those identified parties, requesting that bids be structured as minimum guarantee payments, commission-based or as a going concern.

6. Six parties signed non-disclosure agreements in early January and received access to the Debtors' data room, which contained confidential information about the Debtors' owned

and leased assets. The Debtors also organized and conducted meetings with the parties, facilitated site visits and other diligence, and shortly thereafter, received initial letters of interest from all six parties. By January 25, 2019, the Debtors began to focus on three of the six parties that had offered the highest value, and conducted numerous follow-up calls with those parties and responded to various diligence requests. On February 8, 2019, the Debtors and their professional advisors, the Committee and their professional advisors, and counsel for the DIP Lender conducted in-person interviews of the three remaining bidders determined to have offered the highest value for the assets. Following the interviews, between February 11 and 14, the Debtors facilitated access to the Debtors' property in Perrysburg, Ohio, Red Lion, Pennsylvania, and at various job site locations to facilitate the bidders' final due diligence, such that binding letters of interest could be received by February 15, 2019.

7. The Debtors' marketing and sale process also included efforts to sell the Debtors' business as a going concern. As a result, the Debtors contacted potential third parties identified by the Debtors and their professional advisors as potentially interested in pursuing a going concern sale. However, during the course of the three-month long process, the level of interest at sufficient value levels was non-existent and, as a result, the Debtors determined that a going concern sale would not maximize value and therefore was not feasible.

8. Between February 15 and 25, 2019, the Debtors received and negotiated final binding letters of interest from the three bidders. And, on February 28, 2019, after receiving input from the Committee and the DIP Lender, the Debtors analyzed the structure of the proposed transaction, the consideration received, the expense and overall time as compared to the results of their analysis to the other bids, and selected the bid submitted by Agent as the highest and otherwise best offer for the Assets.

9. In consultation with their advisors, counsel, and the Committee's professionals, the Debtors determined that the minimum guarantee structure was the most effective structure to maximize value to the Debtors' estate, while also providing the necessary downside protection and guarantee the ability to retire the DIP Facility at maturity on April 20, 2019.

B. The Agency Agreement and Related Negotiations

10. As memorialized in the Agency Agreement, the Debtors and the Agent agreed to preserve the Debtors' options to include the Leased Equipment from CFSC under the associated leases in the sale transactions contemplated by the Agency Agreement. After extensive discussions among CFSC, the Agent and the Debtors, in consultation with the Committee professional advisors, CFSC, the Agent and the Debtors agreed on a mutually acceptable transaction (the "**Buyout Transaction**") to include the Leased Equipment in the sale process under the Agency Agreement by exercising the buyout options under the equipment leases with CFSC (the "**Equipment Leases**"). Under the Buyout Transaction, the Debtors will pay CFSC the Caterpillar Equipment Purchase Price in the amount of $30,500,000 and the April Rental Payment in the amount of $257,000, and CFSC will agree to release claims and causes of action against the Debtors and their estates with respect to the Leased Equipment. As a result of the Buyout Transaction, the Debtors and the Agent have agreed to an amendment to the Agency Agreement.

11. Ultimately, the Agent agreed to pay the Debtors the Owned Assets Guaranteed Amount of $20,000,000 no later than two (2) Business Days after entry of the Approval Order plus pay to Caterpillar the Caterpillar Equipment Purchase Price by wire transfer or immediately available funds. Proceeds of the Sale will then be paid in the following order of priority:

a. With respect to Proceeds attributable to all Assets (other than the Caterpillar Equipment):

i. First, all aggregate Proceeds of the Sale up to the Owned Assets Guaranteed Amount will be paid on a monthly basis (or at such shorter intervals as determined by the Agent) to the Agent;

ii. Second, all aggregate Proceeds of the Sale after payment in full of amounts under clause First above will be paid to the Agent for payment in full of the Agent's Owned Assets Base Fee of two million dollars ($2,000,000);

iii. Thereafter, all aggregate Proceeds of the Sale after payment in full of amounts payable under clause Second above will be shared: (x) 75.0% to the Seller and (y) 25.0% to the Agent.

b. With respect to Proceeds attributable to Caterpillar Equipment:

i. First, all aggregate Proceeds of the Sale up to the Caterpillar Equipment Purchase Price will be paid on a monthly basis (or at such shorter intervals as determined by the Agent) to the Agent;

ii. Second, all aggregate Proceeds of the Sale after payment in full of amounts under clause First above will be paid to the Agent for payment in full of the Agent's Caterpillar Equipment Base Fee of three million nine hundred sixty five dollars ($3,965,000);

iii. Thereafter, all aggregate Proceeds of the Sale after payment in full of amounts payable under clause Second above will be shared: (x) 75.0% to the Seller and (y) 25.0% to the Agent.

12. I believe that the Debtors' decision to proceed with the private sale of the Assets and enter into the Agency Agreement without conducting a formal (and second) auction process is a sound exercise of the Debtors' business judgment. The Debtors ran a fulsome competitive marketing and sale process with input and involvement from their key creditor constituencies that lasted nearly four months. Proceeding by private sale, and without conducting a formal court-approved auction, significantly reduces the transaction costs and administrative expenses associated with the Sale. In addition, the Debtors believe that to unlock the greatest amount of value from the Assets, the Debtors require the services of a professional liquidator and

auctioneer who has substantial experience with assets of this nature, which the Agent unquestionably has. The offer embodied in the Agency Agreement represents the highest or otherwise best offer for the Assets, and thus, under the circumstances, proceeding by private sale will maximize the value of the Assets realized by the Debtors' estates, for the benefit of all stakeholders. Further, the Debtors worked with the Committee and the DIP Lender throughout the process.

13. In my opinion, the Debtors and the Agent have acted in good faith throughout the marketing and sale process and their negotiations in that, (1) the Debtors were free to deal with any other party interested in acquiring the Assets and (2) the negotiation and execution of the Agency Agreement were at arm's-length and in good faith. In my opinion, there has been no insider influence or improper conduct by the Agent or any of their affiliates in connection with the negotiation of the Agency Agreement with the Debtors. The Agent and its affiliates are not now and have never been shareholders, members, managers, directors, officers, corporate affiliates, persons in control, or insiders of the Debtors. It is also worth noting that at all times the Debtors and the Agent were each represented by separate counsel. Indeed, the terms in the Agency Agreement regarding, among other things, the distribution of proceeds, the conduct of the sale, the Guaranteed Amount and other payments, and the conditions precedent, reflect the extensive negotiations among the Debtors and the Agent and their counsel in the weeks prior to filing the Sale Motion.

14. The Debtors are neither selling nor leasing personally identifiable information as such term is defined in section 101(41A) (or assets containing personally identifiable information) pursuant to the Motion or the Agency Agreement.

15. The Debtors, in the exercise of their business judgment, believe, and I agree, that the Agent's Fee was a necessary and customary inducement for the Agent to enter into the Agency Agreement.

C. The Sale Motion

16. By the Sale Motion, the Debtors are seeking the sale of the Assets free and clear of all Encumbrances. I believe that the Agent would not have entered into the Agency Agreement, and would not consummate acquisition of the Assets, if the Sales were not free and clear of all such interests. Moreover, not selling the Assets free and clear of all such Encumbrances would adversely impact the value that could be obtained for the Assets and the Debtors' efforts to maximize the value of their estates.

17. I believe that the Buyout Transaction was negotiated in good faith and is the best way to maximize the value of the Leased Equipment. As such, upon my recommendation, the Debtors have commenced the buyout of the Equipment Leases. Pursuant to an amendment to the Agency Agreement, the Leased Equipment will be included in the Sale, and the Agent is entitled to sell the Leased Equipment free and clear of Encumbrances to a third party purchaser. Due to the anticipated recovery that the sale of the Leased Equipment will yield for the Debtors' estates, coupled with the release of claims, I believe that the Debtors' decision to exercise the purchase options for the Leased Equipment was a sound exercise of the Debtors' business judgment.

18. In my opinion, the Sale of the Assets—including the Leased Equipment—pursuant to the terms of the Agency Agreement, as further described in the Sale Motion, is the best way to maximize and the value of the Assets for the Debtors' estates.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my information, knowledge, and belief.

Dated: April 17, 2019

Welded Construction, L.P., *et al.*

/s/ Frank A. Pometti
Frank A. Pometti
Chief Restructuring Officer