

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

In re:)	
)	Chapter 11
)	
WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹)	Case No. 18-12378 (KG)
)	
)	(Jointly Administered)
Debtors.)	
)	Docket Ref. No. 629
)	

**DEBTORS' LIMITED OBJECTION TO MOTION OF SCHMID PIPELINE
CONSTRUCTION, INC. FOR RELIEF FROM THE AUTOMATIC STAY**

The debtors and debtors in possession (together, the “**Debtors**”) in the above-captioned cases (the “**Chapter 11 Cases**”) hereby (i) object (this “**Objection**”) on a limited basis to the *Motion for Relief from the Automatic Stay* [Docket No. 629] (the “**Motion**”) filed by Schmid Pipeline Construction, Inc. (the “**Vendor**”) seeking to enforce and/or foreclose its alleged mechanic’s lien upon certain real property (the “**Property**”) owned by Columbia Gas Transmission, LLC (“**Columbia Gas**”), through the commencement and prosecution of an action against the Debtors and Columbia Gas in West Virginia (an “**Enforcement Action**”), and (ii) request that, to extent the Court grants the relief requested in the Motion, the Court do so in the form of proposed order attached hereto as **Exhibit A** (the “**Proposed Order**”), which contains certain necessary and appropriate protections to ensure that the Debtors, their estates, and other creditors are not unduly prejudiced by any such relief.

PRELIMINARY STATEMENT

1. As an initial matter, the Debtors do not seek to deprive the Vendor of its alleged right to file a mechanic’s lien prior to the applicable statute of limitations. That is most certainly

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.



not the Debtors' goal in filing this Objection. However, the Debtors, which have a fiduciary duty to preserve and maximize estate value for the benefit of all creditors, must ensure that all claims against their estates are reconciled in an efficient and comprehensive manner. Indeed, one of the fundamental protections of the automatic stay is affording the Debtors a breathing spell to reconcile claims against their estates in an efficient and centralized forum, without creditors rushing to various courthouses. While the Debtors appreciate that the Vendor has indicated that it intends to name the Debtors in the Enforcement Action only as a nominal defendant and take no action against estate property absent a further order of this Court, the reality is that the Debtors will nevertheless be forced to actively participate in any Enforcement Action to make sure that the Vendor's alleged claim is liquidated in the appropriate amount. This is so because if Columbia Gas satisfies the alleged claim, Columbia Gas, in turn, may have an indemnification or subrogation claim against the Debtors' estates; and to the extent that Columbia Gas does not satisfy it, the Vendor will have a claim against the Debtors' estates. Thus, practically speaking, it is simply not true that the estates will suffer no prejudice if the relief requested is granted, or that any such prejudice is outweighed by any resulting prejudice to the Vendor.

2. In an effort to balance the potential harm to each party, the Debtors will agree to a limited modification of the automatic stay solely to permit the Vendor to file an Enforcement Action within the statute of limitations period proscribed by applicable West Virginia lien laws with respect to the Property, and to name Debtor Welded Construction, L.P. as a nominal defendant in such Enforcement Action, *provided* that such Enforcement Action, once filed, be

stayed for a period of not less than 90 days, at which point the Vendor is free to seek further relief from this Court to prosecute such action.²

OBJECTION

A. Automatic Stay

3. The automatic stay of section 362 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), is “one of the most fundamental protections granted the debtor under the Bankruptcy Code.” *Izzarelli v. Rexene Prods. Co. (In re Rexene Prods. Co.)*, 141 B.R. 574, 576 (Bankr. D. Del. 1992) (citing *Midlantic Nat’l Bank v. N.J. Dep’t of Env’tl. Prot.*, 474 U.S. 494, 503 (1986)). The automatic stay “prevent[s] certain creditors from gaining a preference for their claims against the debtor; to forestall the depletion of the debtor’s assets due to legal costs in defending proceedings against it; and, in general, to avoid interference with the orderly liquidation or rehabilitation of the debtor.” *Borman v. Raymark Ind., Inc.*, 946 F.2d 1031, 1036 (3d Cir. 1991) (quoting *St. Croix Condo. Owners v. St. Croix Hotel*, 682 F.2d 446, 448 (3d Cir. 1982)), quoted in *Rexene Prods.*, 141 B.R. at 576.

4. The automatic stay is designed to give a debtor a “breathing spell” free from lawsuits and other collection-type activities while the debtor attempts to reorganize its affairs. *See Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991); H.R. Rep. No. 595, 95th Cong. 1st Sess. 340 (1977). Implementation and maintenance of the automatic stay is fundamental to the effective administration of pending bankruptcy cases, as it provides a debtor protection from “a chaotic and uncontrolled scramble for the debtor’s assets in a variety of uncoordinated proceedings in different courts.” *In re Frigitemp Corp.*, 8 B.R. 284, 289 (S.D.N.Y. 1981) (internal citations omitted).

² The Debtors take no position as to whether Welded Construction, L.P. is a necessary party in an Enforcement Action, nor do they concede or otherwise take a position as to the merit of an Enforcement Action.

5. Courts routinely hold that actions to enforce mechanic's lien rights under state lien laws are prohibited by the automatic stay, and that any related statute of limitations period is tolled by section 108(c) of the Bankruptcy Code. *See In re Cusson*, 412 B.R. 646, 655 (Bankr. D. Vt. 2009) (“[I]f a bankruptcy intervenes prior to judgment in an action to enforce the lien then the automatic stay provisions of the bankruptcy code bar the post-petition enforcement of the lien and toll the statutory period for enforcement.”); *In re 360 Networks (USA) Inc.*, 282 B.R. 756, 762-63 (Bankr. S.D.N.Y. 2001) (“To the extent that a filing of an [action] . . . constituted the ‘enforcement’ of a lien . . . it was stayed by virtue of § 362(a) and the time period for commencement of such action was tolled under § 108(c).”); *In re Fiorello & Co.*, 19 B.R. 21, 24 (Bankr. S.D.N.Y. 1982) (“[T]he plaintiff may take no action to enforce its mechanic’s lien, since any conduct beyond the perfection of the lien may tend to interfere with the reorganization process and is stayed under [section] 362 [of the Bankruptcy Code].”); *Krapf Homes, LLC v. Sykes*, 2009 WL 2007153, at *1 (Del. Supr. June 30, 2009) (“Included in the litany of acts that the stay prohibits is . . . the institution of a foreclosure to enforce a mechanic’s lien.”). Thus, the automatic stay applies to bar the commencement and prosecution of an Enforcement Action, and section 108(c) of the Bankruptcy Code tolls the statute of limitations period within which the Vendor must file such Enforcement Action.

6. Section 362(d)(1) of the Bankruptcy Code permits a court to grant relief from the automatic stay “for cause.” 11 U.S.C. § 362. “The term ‘cause’ as used in section 362(d) has no obvious definition and is determined on a case-by-case basis.” *In re Integrated Health Servs., Inc.*, 2000 WL 33712483, at *1 (Bankr. D. Del. Aug. 11, 2000); *In re Lincoln*, 264 B.R. 370, 372 (Bankr. E.D. Pa. 2001) (internal citations omitted) (“Each request for relief for ‘cause’ under

[section] 362(d)(1) must be considered on its own facts.”). In determining whether “cause” exists, courts in this district consider the following three factors:

- (1) the prejudice that would be suffered by the debtors should the stay be lifted;
- (2) the balance of the hardships facing the parties if the stay is lifted; and
- (3) the probable success on the merits if the stay is lifted.

In re Pursuit Athletic Footwear, Inc., 193 B.R. 713, 718 (Bankr. D. Del. 1996) (citing *Rexene Prods.*, 141 B.R. at 576). “To establish cause, the party seeking relief from the stay must show that ‘the balance of hardships from not obtaining relief tips significantly in [its] favor.’” *Atl. Marine Inc. v. Am. Classic Voyages, Co. (In re Am. Classic Voyages, Co.)*, 298 B.R. 222, 225 (D. Del. 2003) (alteration in original) (quoting *In re FRG*, 115 B.R. 72, 74 (E.D. Pa. 1990)); *see also In re DBSI, Inc.*, 407 B.R. 159, 166 (Bankr. D. Del. 2009) (listing as the second prong “whether the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship to the debtor” (internal quotations omitted)).

7. The Vendor has not established that sufficient cause exists to lift the automatic stay in the manner in which it has requested in the Motion. Notwithstanding the Vendor’s assertion that it “will continue to suffer the hardship of not being compensated for the substantial sum of money owed to it for work performed” (Motion, at ¶ 17), the Vendor has not established that it will suffer any harm different or apart from every other creditor in the Debtors’ Chapter 11 Cases, whose claims are also subject to the automatic stay and a claims reconciliation process before this Court as contemplated by the Bankruptcy Code. As set forth above, the automatic stay is intended, among other things, to prevent creditors, such as the Vendor, from initiating ad hoc proceedings against the Debtors to obtain proceeds outside of the bankruptcy court forum, or forcing the Debtors to reconcile and litigate claims on an ad hoc basis, to the detriment of the

Debtors, their estates, and other creditors. *See In re Frigitemp Corp.*, 8 B.R. 284, 289 (S.D.N.Y. 1981).

8. In addition, aside from a conclusory statement that West Virginia is a more appropriate forum to liquidate its alleged lien claims and determine lien issues, the Vendor has not set forth any basis or explanation as to why the Vendor's proof of claim cannot or should not be liquidated, in the first instance, pursuant to the claims resolution process in this Court, at which point it can then proceed with the prosecution of an Enforcement Action to enforce and/or foreclose upon its alleged lien rights with respect to the Property.

9. Simply put, the Debtors will in fact be prejudiced if the Vendor is granted relief from the automatic stay without certain procedural protections. There are numerous vendors in the Chapter 11 Cases who are similarly situated to the Vendor, and relief from the automatic stay may impose on the Debtors substantial administrative burdens stemming from the need, among other things, to supervise countless state court proceedings and ensure that the Debtors' rights and estates are adequately protected, and that claims are reconciled and liquidated in an accurate and comprehensive manner.

10. The Vendor's reliance on *In re 360 Networks (USA) Inc.*, 282 B.R. 756, 765 (Bankr. S.D.N.Y. 2001) and *In re Petroleum Piping Contractors, Inc.*, 211 B.R. 290, 309 (Bankr. N.D. Ind. 1997) is unavailing. Contrary to the Vendor's assertion that the Debtors will suffer no hardship or prejudice (Motion, at ¶¶ 15, 19), the bankruptcy court in *360 Networks* specifically identified the potential harm to a debtor's estate as (i) the costs associated with litigating the motion for relief from stay, (ii) the burden created by the filing of suits in state courts that will name one or more of the debtors, and (iii) the fact that the filing of suits in two different venues could "raise the possibility of a bifurcation of issues among different courts," and concluded that

only limited relief from the stay was appropriate. *Id.* at 764. The court noted that harm to the debtor could be mitigated by providing the creditor limited relief to file an enforcement action, but requiring that such action remain stayed. *Id.* at 765 (“The harm to the Debtors can be secondarily compensated by holding Fishel strictly to its representations on this motion. It states that it seeks only a modification of the automatic stay that would give it the opportunity to file a lawsuit and then leave it stayed.”). In addition, *Petroleum Piping* is distinguishable for two reasons: (1) such case involved a mechanic’s lien filed against public funds, and there are no similar public interest considerations at issue in the instant circumstances; and (2) the parties in that case stipulated that certain construction materials were actually accepted and used on the project in question. 211 B.R. at 309. Unlike in the present case, in which the Debtors may contest the factual bases for the Vendor’s claim, the debtor in *Petroleum Piping* stipulated to the relevant facts at issue; therefore, it had less reason to supervise the lien action, and suffered less prejudice as a result of its continuation.³ See 211 B.R. at 294–95 (“[T]he parties orally agreed that the case could be decided based on a Stipulation of Facts.”).

11. However, in an effort to balance the potential harm to each party with respect to the issues presented by the Motion, the Debtors will agree to a limited modification of the automatic stay solely to permit the Vendor to file an Enforcement Action, provided that such Enforcement Action is immediately stayed as discussed more fully below and provided for in the Proposed Order.

³ In addition to providing the Debtors with a “breathing spell” free of collection-type activities, as referenced above, the proposed 90-day stay will give the parties further opportunity to address the factual bases for the Vendor’s alleged lien claim. The Debtors are, and will continue to be, willing to work with the Vendor to achieve a consensual resolution of any outstanding issues. Indeed, prior to filing this Objection, the Debtors proposed that the Motion be granted generally in the manner provided for in the Proposed Order, but the Vendor was unwilling to stay the Enforcement Action once commenced.

B. The Proposed Order

12. To the extent that the Court grants the relief requested in the Motion, the Court should do so in the form of the Proposed Order, as it is reasonably calculated to preserve the Vendor's rights to file an Enforcement Action within the applicable statute of limitations period, while also protecting the Debtors' interests, and mitigating the burdens associated with granting relief from stay in the manner requested in the Motion.

13. Specifically, the Proposed Order contains the following provisions which are necessary to ensuring that the Debtors and their estates are not unduly prejudiced:

- Provision #1: The automatic stay shall be modified only to the extent required to permit the Vendor to commence the Enforcement Action, naming Welded Construction, L.P. as a nominal defendant in the Enforcement Action, and seeking to enforce and/or foreclose upon the Vendor's asserted mechanic's lien rights and remedies (if any) with respect to the Property; provided, however, that, pursuant to section 362 of the Bankruptcy Code, the Enforcement Action shall be stayed immediately after its filing for a period of not less than 90 days from the commencement of the Enforcement Action, and after the expiration of such 90-day period, the Vendor, in its discretion, may seek further relief from this Court to prosecute the Enforcement Action.
- Provisions #2 is a general reservation of rights for the benefit of the Debtors and their estates and other interested parties in the Chapter 11 Cases.

14. In short, the Proposed Order, among other things, (i) clarifies the limited scope and purpose of the stay modification, and (ii) reserves the rights of the Debtors and their estates and parties in interest with respect to the Enforcement Action and the Vendor's related claims. These provisions strike a careful balance between the hardships and burdens that the Debtors may suffer as a result of the Enforcement Action, versus any prejudice the Vendor may suffer if an Enforcement Action is not timely filed.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that this Court deny the Motion to the extent that it seeks relief other than that provided for in the Proposed Order, and grant such other and further relief to the Debtors as is just and proper.

Dated: April 23, 2019
Wilmington, Delaware

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EXHIBIT A

Proposed Order

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

In re:)	
)	Chapter 11
)	
WELDED CONSTRUCTION, L.P., <i>et al.</i> , ⁴)	Case No. 18-12378 (KG)
)	
)	(Jointly Administered)
Debtors.)	
)	Docket Ref. No. 629
)	

**ORDER GRANTING SCHMID PIPELINE CONSTRUCTION, INC.
LIMITED RELIEF FROM THE AUTOMATIC STAY**

The Court having considered the *Motion for Relief from the Automatic Stay* [Docket No. 629] (the “**Motion**”) filed by Schmid Pipeline Construction, Inc. (the “**Vendor**”) in the above-captioned cases (the “**Chapter 11 Cases**”), any responsive pleadings filed in connection with the Motion, including the *Debtor’s Limited Objection to Motion of Schmid Pipeline Construction, Inc. for Relief from the Automatic Stay*, and the record in the Chapter 11 Cases; and after due deliberation and sufficient cause appearing therefor;

IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted as provided for herein.
2. The automatic stay imposed in the Chapter 11 Cases pursuant to section 362 of the Bankruptcy Code shall be modified only to the extent required to permit the Vendor to commence an action in a court of competent jurisdiction in West Virginia (the “**Enforcement Action**”), naming Welded Construction, L.P. as a nominal defendant, and seeking to enforce and/or foreclose upon the Vendor’s asserted mechanic’s lien rights and remedies (if any) with respect to the real property that is the subject of the Columbia Gas Mountaineer Express

⁴ 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.

Pipeline, located in the county of Wetzel, in the state of West Virginia; *provided, however*, that, pursuant to section 362 of the Bankruptcy Code, the Enforcement Action shall be stayed immediately after its filing for a period of not less than 90 days from the commencement of the Enforcement Action, and after the expiration of such 90-day period, the Vendor, in its discretion, may seek further relief from this Court, upon appropriate notice and a hearing, to prosecute the Enforcement Action. No party shall take any action to prosecute the Enforcement Action absent further order of this Court as provided for herein. Except as expressly permitted in this Order, the Vendor shall not take any action against, or otherwise attempt to collect, the property of the Debtors' estates absent further order of this Court as provided for herein. Nothing herein shall impair, prejudice, waive or otherwise affect any rights, claims, causes of action and defenses of the Debtors and their estates and other interested parties in the Chapter 11 Cases with respect to the Enforcement Action and the related claims of the Vendor.

3. Notwithstanding the terms of Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure, the terms of this Order shall be immediately effective and enforceable upon its entry and this Order is not stayed.

4. This Court shall retain jurisdiction and power to enforce and interpret the provisions of this Order.