

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

In re: WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹ <div style="text-align: center;">Debtors.</div>)))))))	Chapter 11 Case No. 18-12378 (KG) (Jointly Administered) Ref. Docket No. 763
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**ORDER APPROVING STIPULATION GRANTING CHARLES TIBBS
LIMITED RELIEF FROM THE AUTOMATIC STAY**

Upon consideration of that certain *Stipulation Granting Charles Tibbs Limited Relief from the Automatic Stay* annexed hereto as Exhibit 1 (the “Stipulation”)² and the related certification of counsel (the “Certification of Counsel”) submitted by counsel for the above-captioned debtors and debtors in possession (collectively, the “Debtors”); and due and proper notice of the relief provided for herein having been given under the circumstances; and it appearing that no other or further notice of the relief provided for herein is required; and it appearing that this Court has jurisdiction to consider the Stipulation and the Certification of Counsel and enter this Order 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; 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 relief provided for herein is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief provided for herein is in the best interests of the Debtors, their estates, and creditors and an appropriate exercise of the Debtors’ business judgment; and based upon the representations of the Debtors in

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 herein, but not otherwise defined, have the meanings ascribed to them in the Stipulation.



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the Certification of Counsel; and good and sufficient cause appearing therefor under the circumstances; it is hereby **ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Stipulation is hereby approved in all respects and incorporated herein by reference.

2. Subject to the terms of the Stipulation, the Automatic Stay shall be modified for the Claimant for the sole and exclusive purpose of permitting the Claimant to commence and prosecute the Action to determine the liability, if any, of the Debtors in the Action. The sole and exclusive right and remedy of the Claimant regarding the enforcement of any of the claims, causes of action and damages asserted against the Debtors and their estates in the Action (including, without limitation, any judgment obtained by the Claimant in the Action against the Debtors and their estates) shall be limited to the liquidation of such claims, causes of action and damages against the Debtors and their estates and recovery or payment on account of such claims, causes of action and damages solely from any Insurance Proceeds.

3. The provisions of section 362 of the Bankruptcy Code prohibiting execution, enforcement, or collection of any judgment which may be obtained by the Claimant in the Action against any and all assets or property of the Debtors and their estates other than from any Insurance Proceeds shall remain in full force and effect, and (i) neither the Claimant, nor any of the Claimant's agents, attorneys, employees or other representatives or any person or entity claiming by or through the Claimant, shall ever attempt to cause any action to be taken to collect any portion of any such judgment from the assets or properties of the Debtors and their estates other than from any Insurance Proceeds, (ii) the Claimant hereby waives and releases any right to recover from the assets or property of the Debtors and their estates other than from any Insurance Proceeds, and (iii) any proofs of claim filed by the Claimant in the Chapter 11 Cases, including,

without limitation, the Proof of Claim, shall be deemed withdrawn without the need for any further action on the part of the Debtors and their estates, the Claimant or the Court, and the claims agent in the Chapter 11 Cases is authorized to reflect such withdrawal in the claims register for the Chapter 11 Cases. Notwithstanding anything herein or in the Stipulation to the contrary, the withdrawal of any proofs of claim filed by the Claimant in the Chapter 11 Cases as provided for herein and in the Stipulation shall not impair, prejudice, waive or otherwise affect the rights of the Claimant under this Order and the Stipulation to commence and prosecute the Action and recover or receive payment on account of the claims, causes of action and damages asserted against the Debtors and their estates in the Action from any Insurance Proceeds.

4. Nothing herein: (i) alters, amends or otherwise modifies the terms and conditions of the Insurance Policy or of any related agreements; (ii) relieves the Debtors of any of their obligations under the Insurance Policy and any related agreements; (iii) creates or permits a direct right of action by the Claimant against any of the Debtors' insurers; (iv) precludes or limits, in any way, the rights of any insurer to contest and/or litigate the existence, primacy and/or scope of available coverage under any the Insurance Policy or to otherwise assert any defenses to coverage; or (v) constitutes a determination or admission that coverage exists with respect to the Claims or the Action.

5. The Debtors and the claims agent in the Chapter 11 Cases are authorized to take any action necessary or appropriate to implement the terms of the Stipulation and this Order without further order from this Court.

6. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of the Stipulation or this Order.

Dated: June 3rd, 2019
Wilmington, Delaware

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

KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Stipulation

**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)
)	
Debtors.)	(Jointly Administered)
)	

**STIPULATION GRANTING CHARLES TIBBS
LIMITED RELIEF FROM THE AUTOMATIC STAY**

This stipulation (this “Stipulation”) is entered into by and among the above-captioned debtors and debtors-in-possession (each, a “Debtor,” and collectively, the “Debtors”) and Charles Tibbs (the “Claimant,” and together with the Debtors, the “Parties”).

RECITALS

A. On October 22, 2018 (the “Petition Date”), the Debtors filed voluntary petitions in the United States Bankruptcy Court for the District of Delaware (the “Court”) for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), thereby commencing the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. On February 11, 2019, the Claimant filed proof of claim number 428 in the Chapter 11 Cases (the “Proof of Claim”), asserting contingent and unliquidated claims for alleged personal injury and related claims for which no formal complaint has yet been filed

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(collectively, the “Claims”). The Claims relate to an incident that allegedly occurred prior to the Petition Date, on or around September 1, 2017, in Glendale, West Virginia (the “Incident”).

C. Claimant, by and through his counsel, made an informal request to the Debtors to modify the automatic stay pursuant to section 362 of the Bankruptcy Code (the “Automatic Stay”) on a limited basis to commence an action against the Debtors with respect to the Incident in the State of West Virginia (the “Action”) solely to proceed against the Debtors’ applicable insurance policies (collectively, the “Insurance Policy”).

D. Prior to the execution of this Stipulation, the Parties have engaged in good-faith negotiations with respect to the Claimant’s informal request for relief from the Automatic Stay.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Stipulation and with the intent to be legally bound, the Parties do hereby agree as follows:

1. This Stipulation is conditioned upon the Court’s entry of an order, substantially in the form attached hereto as Exhibit 1 (the “Approval Order”), approving this Stipulation on such notice and after such hearing as the Court may require, and the Parties shall use their commercially reasonable efforts to promptly obtain entry of the Approval Order.

2. The Automatic Stay shall be modified for the Claimant for the sole and exclusive purpose of permitting the Claimant to commence and prosecute the Action to determine the liability, if any, of the Debtors in the Action.

3. The sole and exclusive right and remedy of the Claimant regarding the enforcement of any of the claims, causes of action and damages asserted against the Debtors and their estates in the Action (including, without limitation, any judgment obtained by the Claimant in the Action against the Debtors and their estates) shall be limited to the liquidation of such

claims, causes of action and damages against the Debtors and their estates and recovery or payment on account of such claims, causes of action and damages solely from any proceeds of the Insurance Policy ("Insurance Proceeds").

4. The provisions of section 362 of the Bankruptcy Code prohibiting execution, enforcement, or collection of any judgment which may be obtained by the Claimant in the Action against any and all assets or property of the Debtors and their estates other than from any Insurance Proceeds shall remain in full force and effect, and (i) neither the Claimant, nor any of the Claimant's agents, attorneys, employees or other representatives or any person or entity claiming by or through the Claimant, shall ever attempt to cause any action to be taken to collect any portion of any such judgment from the assets or properties of the Debtors and their estates other than from any Insurance Proceeds, (ii) the Claimant hereby waives and releases any right to recover from the assets or property of the Debtors and their estates other than from any Insurance Proceeds, and (iii) any proofs of claim filed by the Claimant in the Chapter 11 Cases, including, without limitation, the Proof of Claim, shall be deemed withdrawn without the need for any further action on the part of the Debtors and their estates, the Claimant or the Court, and the claims agent in the Chapter 11 Cases is authorized to reflect such withdrawal in the claims register for the Chapter 11 Cases. Notwithstanding anything herein to the contrary, the withdrawal of any proofs of claim filed by the Claimant in the Chapter 11 Cases as provided for herein shall not impair, prejudice, waive or otherwise affect the rights of the Claimant under this Stipulation to commence and prosecute the Action and recover or receive payment on account of the claims, causes of action and damages asserted against the Debtors and their estates in the Action from any Insurance Proceeds.

5. Nothing herein is intended or shall be deemed to be a stipulation, agreement, warranty or admission by the Debtors and their estates that: (i) the Debtors and their estates are liable to the Claimant for any amounts at all; and (ii) any claims, causes of action and damages alleged in the Proof of Claim or the Action are covered in whole, in part, or at all, under the Insurance Policy. Although they may choose to do so, nothing herein is intended or shall be deemed to create a duty or obligation on the part of the Debtors and their estates and any agents, attorneys, employees or other representatives thereof to defend against any claims, causes of action and damages asserted in the Action or to incur any costs in connection therewith.

6. The Claimant represents and warrants that the Claimant has not sold, assigned, pledged or otherwise transferred the Claims or any part thereof.

7. The Recitals stated above constitute and form an integral part of this Stipulation and are incorporated by reference as if set forth herein in full.

8. The undersigned are duly authorized and empowered to execute this Stipulation.

9. The Parties have participated in and jointly consented to the drafting of this Stipulation, and any claimed ambiguity shall not be construed for or against either of the Parties on account of such drafting.

10. This Stipulation and all of its terms shall be binding upon and shall inure to the benefit of the Parties and each of their respective executors, heirs, permitted successors and assigns, and all persons and entities claiming by or through the Parties.

11. During the pendency of the Chapter 11 Cases, the Parties expressly consent and submit to the exclusive jurisdiction of the Court over any actions or proceedings relating to the enforcement or interpretation of this Stipulation and the Approval Order and any

Party bringing such action or proceeding shall bring such action or proceeding in the Court. The Parties consent to the Court entering a final judgment determining such matter and agree that a final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

12. This Stipulation and all claims and disputes arising out of or in connection with this Stipulation shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to choice of law principles to the extent such principles would apply a law other than that of the State of Delaware.

13. Except as otherwise provided herein, this Stipulation constitutes the entire agreement of the Parties concerning the subject matter hereof, and supersedes any and all prior or contemporaneous agreements among the Parties concerning such subject matter. The Parties acknowledge that this Stipulation is not being executed in reliance on any oral or written agreement, promise or representation not contained herein. Any amendment to this Stipulation must be in a writing signed by both of the Parties.

14. Nothing herein: (i) alters, amends or otherwise modifies the terms and conditions of the Insurance Policy or of any related agreements; (ii) relieves the Debtors of any of their obligations under the Insurance Policy and any related agreements; (iii) creates or permits a direct right of action by the Claimant against any of the Debtors' insurers; (iv) precludes or limits, in any way, the rights of any insurer to contest and/or litigate the existence, primacy and/or scope of available coverage under any the Insurance Policy or to otherwise assert any defenses to coverage; or (v) constitutes a determination or admission that coverage exists with respect to the Claims or the Action.

15. Nothing in this Stipulation is intended to bind any non-Debtor defendant nor shall it be deemed to waive or release any claim against any non-Debtor defendant in any Action.

16. This Stipulation may be executed in counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of both of the Parties need not appear on the same counterpart.

WELDED CONSTRUCTION, L.P., on behalf of the Debtors

By: 

Name: Frank Pometti

Title: Chief Restructuring Officer

Dated: May 31, 2019

CHARLES TIBBS



Dated: May 23, 2019

EXHIBIT 1

Approval 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. _____

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3. The provisions of section 362 of the Bankruptcy Code prohibiting execution, enforcement, or collection of any judgment which may be obtained by the Claimant in the Action against any and all assets or property of the Debtors and their estates other than from any Insurance Proceeds shall remain in full force and effect, and (i) neither the Claimant, nor any of the Claimant's agents, attorneys, employees or other representatives or any person or entity claiming by or through the Claimant, shall ever attempt to cause any action to be taken to collect any portion of any such judgment from the assets or properties of the Debtors and their estates other than from any Insurance Proceeds, (ii) the Claimant hereby waives and releases any right to recover from the assets or property of the Debtors and their estates other than from any Insurance Proceeds, and (iii) any proofs of claim filed by the Claimant in the Chapter 11 Cases, including,

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5. The Debtors and the claims agent in the Chapter 11 Cases are authorized to take any action necessary or appropriate to implement the terms of the Stipulation and this Order without further order from this Court.

6. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of the Stipulation or this Order.