

**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)
)	
)	Ref. Docket No. 919

**ORDER APPROVING SETTLEMENT AGREEMENT BETWEEN SECRETARY
OF LABOR AND RESPONDENT WELDED CONSTRUCTION, L.P.**

Upon consideration of that certain *Settlement Agreement* attached hereto as Exhibit A (the “**Settlement Agreement**”) between the Secretary of Labor and Welded Construction L.P., one of the above-captioned debtors and debtors in possession (together, the “**Debtors**”), and the related certification of counsel (the “**Certification of Counsel**”) filed by the Debtors; and due and proper notice of the Settlement Agreement and the relief provided for herein having been given under the circumstances; and it appearing that no other or further notice of the Settlement Agreement and the relief provided for herein is required under the circumstances; and it appearing that this Court has jurisdiction to consider the Settlement Agreement 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 this Order is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the Settlement Agreement and the relief provided for herein is in the best interests of the Debtors, their estates, and creditors and is

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.



an appropriate exercise of the Debtors' business judgment; and based upon the representations of the Debtors in the Certification of Counsel; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Settlement Agreement is approved, and the terms and conditions of the Settlement Agreement are incorporated into this Order as if fully set forth herein.

2. The claims agent for these chapter 11 cases is authorized and directed to modify the official claims register maintained by the claims agent for such cases to comport with the relief granted herein and the terms of the Settlement Agreement.

3. The Debtors are authorized to execute and deliver such other instruments or documents and take such other action as may be necessary or appropriate to implement and effectuate the relief granted herein.

4. This Order shall become effective immediately upon its entry and shall not be stayed notwithstanding anything in the Federal Rules of Bankruptcy Procedure to the contrary.

5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.



KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Settlement Agreement

**UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

SECRETARY OF LABOR,	:	
	:	OSHRC Nos. 18-1493 & 18-0415
Complainant,	:	
	:	
v.	:	Inspection Nos. 1312576 & 1292788
	:	
WELDED CONSTRUCTION, L.P.,	:	
and its successors,	:	
	:	
Respondent.	:	Honorable Keith E. Bell

SETTLEMENT AGREEMENT

The Secretary of Labor and Respondent Welded Construction, L.P., by their undersigned representatives, have reached a full and complete settlement of the above-captioned cases pursuant to 29 C.F.R. § 2200.100. Accordingly, the parties stipulate and agree to the following:

1. The Commission has jurisdiction over these matters pursuant to Section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651 *et seq.* (hereinafter “the Act”).
2. Respondent is an employer within the meaning of Section 3(5) of the Act.
3. The Citation and Notification of Penalty for Inspection No. 1292788 issued on February 15, 2018 to Respondent is amended as follows:
 - a. Citation 1, Item 1 is affirmed as issued but the penalty is amended to \$5,081.50.
 - b. Citation 1, Item 2 is amended to state a Serious violation of Section 5(a)(1) of the Act and the language is amended to state the following:
OSH Act of 1970 Section 5(a)(1): The employer did not furnish employment and a place of employment which were free from recognized cave-in hazards that were causing or likely to cause serious physical harm to employees:
 - (a) Site 79 & 32 in Lancaster, PA – Employer improperly classified the

soil in and about a trench for purposes of providing an adequate sloping and benching system or a supported system, shield system, or other protective systems thereby exposing employees to a trench collapse, on or about February 1, 2018.

c. The penalty for Citation 1, Item 2 is amended to \$6,467.00.

4. The Citation and Notification of Penalty for Inspection No. 1312576 issued on August 31, 2018 to Respondent is amended as follows:

- a. Citation 1, Item 1 is affirmed as issued but the penalty is amended to \$6,467.00.
- b. Citation 1, Item 2 is amended to state a Serious violation of Section 5(a)(1) of the Act and the language is amended to state the following:
OSH Act of 1970 Section 5(a)(1): The employer did not furnish employment and a place of employment which were free from recognized cave-in hazards that were causing or likely to cause serious physical harm to employees:

(a) Atlantic Sunrise a Petroleum pipe line Spread 6 at Route 422 and Clear Springs Road Lebanon, PA – Employer improperly classified the soil in and about a trench for purposes of providing an required 1 ½ to 1 sloping, or other engineered protective systems thereby exposing employees to hazards related to a trench collapse, on or about May 1, 2018.

c. The penalty for Citation 1, Item 2 is amended to \$6,467.00.

5. The total combined penalty for the affirmed Citations for Inspection Nos. 1292788 and 1312576 (together, the “Citations”) is \$24,482.50 (the “Combined Penalty”). The Combined Penalty shall be an allowed general unsecured pre-petition claim (the “Allowed General Unsecured Claim”) in Respondent’s chapter 11 case, Case No. 18-12378 (KG) (the “Chapter 11 Case”), pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Allowed General Unsecured Claim shall be satisfied pursuant to and as set forth in such plan of liquidation as may be confirmed by the Bankruptcy Court and becomes effective in the Chapter 11 Case, and in the event that such a plan is not confirmed or

does not become effective, then pursuant to any order of the Bankruptcy Court addressing the treatment in the Chapter 11 Case of allowed general unsecured pre-petition claims.

6. The Allowed General Unsecured Claim shall fully and finally satisfy and resolve the Citations and proof of claim numbers 566 and 568 (together, the “Proofs of Claim”) filed by the U.S. Department of Labor – OSHA, on behalf of the Secretary, in the Chapter 11 Case.

7. This Settlement Agreement is conditioned upon the Bankruptcy Court’s entry in the Chapter 11 Case of an order in the form attached hereto as Exhibit 1 (the “Approval Order”) approving this Settlement Agreement on such notice and after such hearing as the Bankruptcy Court may require, and the parties shall use their commercially reasonable efforts to obtain entry of the Approval Order.

8. Upon entry of the Approval Order, Respondent shall promptly: (i) withdraw its notice of contest of the Citations; (ii) post a copy of this Settlement Agreement in accordance with the requirements of 29 C.F.R. §2200.100 (c) and 29 CFR § 2200.7 at the following location: 26933 Eckel Road, Perrysburg, Ohio 43551, on Respondent’s employee bulletin board for legal notices; and (iii) comply with the applicable provisions of the Act, and the applicable health and safety standards promulgated pursuant to the Act.

9. If the Bankruptcy Court fails to enter the Approval Order, then (1) the Secretary is free to pursue all of the claims and requests for relief asserted in Citation and Notification of Penalty for Inspection Numbers 1312576 and 1292788, (2) Respondent shall likewise be free to assert all defenses of any kind to the Secretary’s claims and requests for relief asserted in these matters, and (3) this Settlement Agreement shall be null and void and of no force and effect in connection with these matters, the Chapter 11 Case or otherwise.

10. Except for the requirements under Paragraph 8(iii) and any other matters relating

to Respondent's compliance with the Act, which remain within the jurisdiction of the Occupational Safety and Health Review Commission, during the pendency of the Chapter 11 Case, the parties expressly consent and submit to the jurisdiction of the Bankruptcy Court over any actions or proceedings relating to the enforcement or interpretation of this Settlement Agreement and the Approval Order, and the party bringing such action or proceeding shall bring such action or proceeding in the Bankruptcy Court. The parties consent to the Bankruptcy Court entering a final judgment determining such matters, as stated in the preceding sentence of this Paragraph 10, 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.

11. The Secretary acknowledges that this Settlement Agreement will affix the amount owed in connection with these administrative proceedings but that ultimately any payment by Respondent on the amount owed will be subject to the Bankruptcy Court's entry of the Approval Order and the terms and conditions of this Settlement Agreement and the Approval Order.

12. The parties agree that the Citations are amended to include the provisions of this Settlement Agreement. The parties agree that the Citations as amended by this Settlement Agreement will become a final order of the Commission thirty days from the date the Order Terminating Proceedings is docketed by the Executive Secretary.

13. The parties agree to bear their own attorney fees, costs, and other expenses incurred in connection with any stage of the above-referenced proceeding, the negotiation and execution of this Settlement Agreement, and obtaining entry of the Approval Order, including, but not limited to, attorney fees and costs which may be available under the Equal Access to Justice Act, as amended.

14. Nothing in this Settlement Agreement shall be construed as an admission by Respondent of any of the allegations contained in the Citations, and Respondent expressly denies those allegations. The amendments and stipulations set forth in this Settlement Agreement are made solely for the purpose of resolving these matters without further litigation, and shall not be used for any purpose except for proceedings and matters arising under the Act or the Bankruptcy Code.

15. The Secretary represents and warrants that the Proofs of Claim or any part thereof have not been sold, assigned, pledged or otherwise transferred.

16. The claims agent for the Chapter 11 Case is authorized and directed to modify the official claims register maintained by the claims agent for such cases to comport with the terms of this Settlement Agreement (i.e., Proof of Claim number 566 shall be an allowed general unsecured pre-petition claim in the total amount of \$12,934.00, and Proof of Claim number 568 shall be an allowed general unsecured pre-petition claim in the amount of \$11,548.50).

17. The undersigned are duly authorized and empowered to execute this Settlement Agreement on behalf of the respective parties.

18. The parties have participated in and jointly consented to the drafting of this Settlement Agreement and the Approval Order, and any claimed ambiguity shall not be construed for or against either of the parties on account of such drafting.

19. This Settlement Agreement 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, estate representatives, trustees and all persons and entities claiming by or through the parties.

20. Except as otherwise provided herein, this Settlement Agreement 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 Settlement Agreement is not being executed in reliance on any oral or written agreement, promise or representation not contained herein. Any amendment to this Settlement Agreement must be in a writing signed by both of the parties.

21. The Secretary and Respondent intend that any agreements between them are incomplete and that no obligation exists between them unless and until their agreements are reduced to writing in this Settlement Agreement and signed by both the Secretary and Respondent, or by their respective authorized representatives, and approved by the Bankruptcy Court through the entry of the Approval Order.

22. This Settlement Agreement 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.

Respectfully submitted,

U.S. DEPARTMENT OF LABOR

WELDED CONSTRUCTION, L.P.

Kate S. O'Scannlain
Solicitor of Labor

Oscar L. Hampton III
Regional Solicitor

/s/ Bertha M. Astorga
Bertha M. Astorga, Esq.

/s/ William S. Myers
William S. Myers

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Counsel for Complainant

Counsel for Respondent

Dated: August 5, 2019

Dated: August 5, 2019

**UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION**

SECRETARY OF LABOR,

Complainant,

v.

WELDED CONSTRUCTION, L.P.,
and its successors,

Respondent.

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:
:
:
:
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:
:
:

OSHRC Nos. 18-1493 & 18-0415

Inspection Nos. 1312576 & 1292788

Honorable Keith E. Bell

ORDER TERMINATING PROCEEDINGS

The Court hereby acknowledges that the parties have resolved all contested citation items and have agreed to terminate proceedings before the Commission.

Dated: _____

Honorable Keith E. Bell
Judge, OSHRC

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based upon the representations of the Debtors in the Certification of Counsel; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

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