

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

WELDED CONSTRUCTION, L.P., *et al.*,¹

Debtors.

In re:

WELDED CONSTRUCTION, L.P., AND
WELDED CONSTRUCTION MICHIGAN,
LLC,

Plaintiffs,

-vs-

PRIME NDT SERVICES, INC.
Defendant.

Chapter 11

Case No. 18-12378 (CSS)

(Jointly Administered)

Adv. Pro. No. 19-50180 (CSS)

Reference Docket No. 1236 & 1285

**ORDER APPROVING AND AUTHORIZING THE SETTLEMENT AGREEMENT
BY AND BETWEEN THE DEBTORS AND PRIME**

Upon consideration of the motion (the “Motion”)² of the Debtors for entry of an order, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, approving the Settlement Agreement (attached hereto as Exhibit 1) entered into by and between the Debtors and Prime, as more fully described in the Motion; and it appearing that this Court has jurisdiction to consider the 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; and it appearing that venue of these chapter 11 cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a

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 P.O. Box 470, Perrysburg, OH 43552- 0470.

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion or the Settlement Agreement, as applicable.

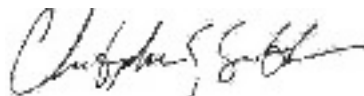


core proceeding pursuant to 28 U.S.C. § 157(b) and the Court may enter a final order on the Motion consistent with Article III of the United States Constitution; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and other parties in interest; and this Court having found that the relief requested in the Motion is justified by the facts and circumstances; and it appearing that proper and adequate notice of the Motion has been given and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**.
2. The Settlement Agreement, a copy of which is attached hereto as Exhibit 1, is approved in its entirety pursuant to sections 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.
3. The releases set forth in the Settlement Agreement are approved.
4. The Debtors are authorized and empowered to take any and all actions necessary to carry out, effectuate, or otherwise enforce the terms, conditions, and provisions of the Settlement Agreement.
5. Notwithstanding anything in the Bankruptcy Rules to the contrary, this Order shall become effective immediately upon its entry.
6. This Court shall retain jurisdiction to hear any and all disputes arising out of the interpretation or enforcement of this Order.

Dated: March 19th, 2020
Wilmington, Delaware



CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is made and entered into as of February 27 2020, by and between Welded Construction L.P. and Welded Construction Michigan, LLC (collectively, the “Debtors,” “Plaintiffs,” or “Welded”) and Prime NDT Services, Inc. (“Prime” or “Defendant” and, together with the Debtors, the “Parties”).¹

RECITALS

- A. On October 22, 2018, each of the Debtors commenced a voluntary case under Chapter 11 of the Bankruptcy Code.
- B. Welded operated as a mainline pipeline construction contractor headquartered in Perrysburg, Ohio. In the summer of 2018, Welded oversaw the construction of three separate pipeline “spreads” within the Mariner East Pipeline (the “Project”) owned by Sunoco Marketing Partners & Terminals L.P. and Sunoco Pipeline L.P. (collectively, “Sunoco”).
- C. Prime was retained by Welded to perform non-destructive examinations x-rays of the completed welds on the PPP 1 spread of the Project (“Contract”).
- D. On March 27, 2019, Plaintiffs commenced an adversary proceeding (the “Adversary Proceeding”) by filing a *Complaint* [Adv. Docket No. 1]. Following motion practice on a motion to withdraw the reference to the United States District Court for the District of Delaware (the “District Court”) [Adv. Docket No. 5] and a partial motion to dismiss the *Complaint* [Adv. Docket No. 7], Prime filed its *Answer* to the *Complaint* on September 9, 2019 [Adv. Docket No. 39].
- E. In an effort to effectuate a Bankruptcy Court Order approving a settlement between Sunoco and the Debtors with respect to the Project [Docket No. 392], Sunoco, Welded, and Prime entered into a *Subcontractor Direct Pay Agreement and Authorization* and a *Subcontractor’s Release of Liens and Claims* (the “Settlement Documents”), which addressed the claims related to the services, work, or supplies, that Prime provided to the Project through October 18, 2018. The Debtors and Prime executed that certain *Escrow Agreement*, dated April 17, 2019 (the “Escrow Agreement”),² escrowing the funds paid pursuant to the Settlement Documents pending resolution of the Adversary Proceeding.
- F. The Parties desire to settle the controversy between them in order to avoid the cost, inconvenience, delays and uncertainties involved in further legal proceedings, without any Party conceding the correctness of the position of the other.

AGREEMENT

NOW, THEREFORE, subject to paragraph 6 below, the Parties, by and through their respective counsel, agree as follows:

¹ The parties to this Agreement may be referred to collectively as the “Parties” or individually as a “Party”.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Escrow Agreement.

1. Payment. Prime shall pay \$6.2 million (the “Payment”) to Welded within ten (10) days following Bankruptcy Court approval of this Agreement, provided that the Payment will not be due under any circumstances until March 16, 2020. The Payment will conclude the Adversary Proceeding in its entirety.
2. Dismissal of Pending Proceeding. The Parties shall file a stipulation of dismissal within three calendar (3) days of Welded’s receipt of the Payment, dismissing the Adversary Proceeding with prejudice.
3. Release of Escrow Funds. Following receipt of the Payment and submission of this Agreement to the Escrow Agent in accordance with the Escrow Agreement, the Funds held in the Escrow Account shall be released to Prime.
4. Release by Prime. Upon Welded’s receipt of the Payment, Prime, on behalf of itself and each of its affiliates, parent entities, subsidiaries, predecessors, successors, assigns, officers, directors, employees, shareholders, lenders, agents, professionals, servants, representatives, attorneys, members, beneficiaries, and insurers, past, present, and future (each, a “Prime Releasing Party”, and collectively, the “Prime Releasing Parties”), unconditionally and forever do fully and finally release, acquit and discharge each of the Debtors, and each of their respective estates, affiliates, parent entities, subsidiaries, partners, predecessors, successors, assigns, officers, directors, employees, shareholders, lenders, agents, professionals, servants, representatives, attorneys, members, beneficiaries, and insurers, past, present, and future (each, a “Debtor Released Party”, and collectively, the “Debtors Released Parties”), from any and all actions, complaints, causes of action, claims (whether they be unsecured, secured, priority, and/or administrative, including crossclaims, counterclaims, rights of set-off and recoupment), promises, obligations, losses, demands, damages, expenses, fees, liens, attorney’s fees or costs and any and all liabilities that any Prime Releasing Party has or had against any Debtor Released Party, of whatsoever nature and kind, whether known or unknown, now existing or hereafter arising, arising at law or in equity, in connection with, based upon, by reason of, relating to or arising from the Adversary Proceeding, the Project and/or the Contract, including, but not limited to, those that arise from or relate in any way to any agreements between or among any releasing party and any released party, and the transactions contemplated thereby, whether founded in contract, in tort, or pursuant to any other theory of liability; ***provided, however,*** that such releases shall not release any Debtor Released Party from such Party’s obligations under this Agreement.
5. Release by the Debtors. Upon Welded’s receipt of the Payment, each of the Debtors, on behalf of themselves and each of their respective estates, affiliates, parent entities, subsidiaries, predecessors, successors, assigns, officers, directors, employees, shareholders, lenders, agents, professionals, servants, representatives, attorneys, members, beneficiaries, and insurers, past, present, and future (each, an “Debtor Releasing Party”, and collectively, the “Debtors Releasing Parties”), unconditionally and forever do fully and finally release, acquit and discharge Prime, and each of its affiliates, parent entities, subsidiaries, partners, predecessors, successors, assigns, officers, directors, employees, shareholders, lenders, agents, professionals, servants, representatives, attorneys, members, beneficiaries, and insurers, past, present, and future (each, a “Prime Released Party”, and collectively, the “Prime Released Parties”), from any and all actions, complaints, causes of action, claims (whether they be unsecured, secured, priority, and/or administrative,

including crossclaims, counterclaims, rights of set-off and recoupment), promises, obligations, losses, demands, damages, expenses, fees, liens, attorney's fees or costs and any and all liabilities that any Debtor Releasing Party has or had against any Prime Released Party, of whatsoever nature and kind, whether known or unknown, now existing or hereafter arising, arising at law or in equity, in connection with, based upon, by reason of, relating to or arising from the Adversary Proceeding, the Project and/or the Contract, including, but not limited to, those that arise from or relate in any way to any agreements between or among any releasing party and any released party, and the transactions contemplated thereby, whether founded in contract, in tort, or pursuant to any other theory of liability, *provided, however*, that such releases shall not release any Prime Released Party from such Party's obligations under this Agreement.

6. Binding Upon Bankruptcy Court Approval. This Agreement and obligations of the Parties hereunder are subject to the approval of the Bankruptcy Court and shall be effective upon entry of the Bankruptcy Court's approval order. To the extent that this Agreement is not approved, all Parties' rights are expressly reserved and preserved.
7. Attorneys' Fees. Each Party shall be responsible for its respective costs and expenses (including, without limitation, attorneys' fees) incurred by it in connection with this Agreement, the Adversary Proceeding, and any matter that is the subject of the releases granted herein. In the event any legal proceeding arises in connection with the interpretation or enforcement of this Agreement, the prevailing Party therein shall be entitled to receive from the other Party the prevailing Party's costs and expenses, including reasonable attorneys' fees incurred in connection therewith, in preparation therefor and on appeal therefrom.
8. Successors and Assigns. This Agreement shall be binding upon the Parties and their respective successors and assigns.
9. Authorizations. Each Party represents and warrants to each other Party that it is authorized to execute this Agreement, that it has full power and authority to enter into this Agreement and effectuate the matters provided hereunder and that this Agreement is duly executed and delivered by it, and constitutes its valid, binding agreement in accordance with its terms (subject to Bankruptcy Court approval) and that it has not transferred any claim that is the subject of this Agreement.
10. Entire Agreement. This Agreement contains the entire agreement among the Parties relating to the subject matter hereof and can be amended, waived or otherwise modified only by a signed writing executed by each of the Parties.
11. Counterparts. This Agreement may be executed in multiple counterparts, any of which may be transmitted by electronic (e-mail) transmission, and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and it shall constitute sufficient proof of this Agreement to present any copy signed by the Parties hereto to be charged.
12. No Admission of Liability. It is expressly understood and agreed that entry into this Agreement does not constitute an admission of liability, fault, wrongdoing, or any fact by any of the Parties.

13. Governing Law and Jurisdiction. The United States Bankruptcy Court for the District of Delaware shall have exclusive jurisdiction to hear any matter concerning the interpretation or enforcement of this Agreement. Any matter concerning the interpretation or enforcement of this Agreement shall be construed under the laws of the State of Delaware (without application of principles of conflicts of law) and the Bankruptcy Code.
14. Severability. If any term, clause or provision of this Agreement shall be judged to be invalid, the remaining provisions of this Agreement shall remain in full force and effect and will not be affected by the invalid term, clause or provision or by its severance therein, unless such continued effectiveness of this Agreement, as modified, would be contrary to the basic understanding and intentions of the parties as expressed herein. The Parties shall endeavor in good faith negotiations to replace the invalid term, clause or provision with a valid provision, the effect of which would accomplish the intention of the Parties as closely as possible.
15. Construction of Ambiguity. It is acknowledged that each of the Parties has participated in the drafting of this Agreement and any ambiguity found herein shall not be construed against any Party.
16. Knowledge of Terms of Agreement. Each Party warrants and represents that in entering into this Agreement, it is relying solely upon its own judgment, belief and knowledge and, as applicable, on that of any attorney it has retained to represent it in this matter. No Party is relying on any representation or statement made by any other Party or any person representing such other Party except for the representations and warranties expressly set forth in this Agreement. By signing this Agreement, the Parties hereby confirm and state that (a) they have each carefully read this Agreement, (b) that they each know the content of this Agreement and (c) that they have each been represented by independent legal counsel in connection with the negotiation of this Agreement.
17. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer on any person or entity other than the Parties and their respective successors and assigns (and, solely in the case of sections 4–5, the Released Parties and the Releasing Parties), any rights, remedies, obligations or liabilities under or by reason of this Agreement.
18. No Assignment. Each Party expressly represents and warrants that it has not assigned, pledged or otherwise sold or transferred, either by written instrument or otherwise, any right, title, interest, or claims it has or may have in connection with or arising out of the Adversary Proceeding, which is the subject of this Settlement Agreement, with the exception of the assignment of a part of its interest made to its attorney, if any, which assigned interest, if any, continues to be held by said attorney. This provision does not apply to any transfer or assignment of rights, title, or interests relating to Welded’s chapter 11 plan of reorganization.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have voluntarily and with full knowledge executed this Agreement or caused it to be executed by their duly authorized representative.

AGREED BY:

Dated: February 27, 2020

Welded Construction, L.P., and
Welded Construction Michigan, LLC

By: 

Name: Frank A. Pometti

Title: Chief Restructuring Officer

Dated: February __, 2020

Prime NDT Services, Inc.

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Parties have voluntarily and with full knowledge executed this Agreement or caused it to be executed by their duly authorized representative.

AGREED BY:

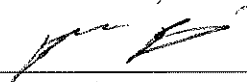
Dated: February __, 2020

Welded Construction, L.P., and
Welded Construction Michigan, LLC

By: _____
Name: Frank A. Pometti
Title: Chief Restructuring Officer

Dated: February 27, 2020

Prime NDT Services, Inc.

By:  _____
Name: Jairo Perez
Title: Chief Financial Officer