

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

In re:	Chapter 11
Welded Construction, L.P., <i>et al.</i> ,	Case No. 18-12378 (CSS)
Debtors. <sup>1</sup>	(Jointly Administered)
Welded Construction, L.P.,	
Plaintiff,	
v.	Adversary No. 20-50951
Tract Resources LLC,	
Defendant.	

**ANSWER TO COMPLAINT**

The Defendant, Tract Resources LLC, by and through its undersigned attorneys, hereby responds to the *Complaint to Avoid and Recover Transfers Pursuant to 11 U.S.C. §§ 547, 548, and 550 and to Disallow Claims Pursuant to 11 U.S.C. § 502* as follows:

**NATURE OF THE CASE**

1. The allegations of Paragraph 1 appear to be legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant admits the allegations contained therein.

2. The allegations of Paragraph 2 appear to be legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant admits that the Plaintiff seeks to disallow, pursuant to sections 502(d) and 502(j) of the Bankruptcy Code, any

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<sup>1</sup> 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).



claim that Defendant has filed or asserted against the Debtors or that has been scheduled for Defendant.

### **JURISDICTION AND VENUE**

3. The allegations of Paragraph 3 appear to be legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant admits that this Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b).

4. The allegations of Paragraph 4 appear to be legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant admits that the statutory and legal predicates for the relief sought in the Complaint are sections 502, 547, 548, and 550 of the Bankruptcy Code and Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure.

5. The allegations of Paragraph 5 appear to be legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant admits that this adversary proceeding is a core proceeding under 28 U.S.C. § 157(b)(2).

6. The allegations of Paragraph 6 appear to be legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant admits that venue is proper in the District of Delaware pursuant to 28 U.S.C. § 1409.

7. The allegations of Paragraph 7 appear to be legal conclusions or statements to which no response is required. To the extent a response is required, pursuant to Fed. R. Bankr. P. 7012(b) and Local Bankr. R. 7012-1, the Defendant states that it consents to entry of final orders or judgments by this Court.

**PROCEDURAL BACKGROUND**

8. Answering Paragraph 8, the Defendant admits the allegations contained therein.
9. Answering Paragraph 9, the Defendant admits the allegations contained therein.
10. Answering Paragraph 10, the Defendant admits the allegations contained therein.
11. Answering Paragraph 11, the Defendant admits the allegations contained therein.
12. Answering Paragraph 12, the Defendant admits that the Plan speaks for itself.
13. Answering Paragraph 13, the Defendant admits that the Plan speaks for itself.

**THE PARTIES**

14. Answering Paragraph 14, the Defendant admits that the Plan and the Confirmation Order speak for themselves.

15. Answering Paragraph 15, the Defendant admits that it was, at all relevant times, a vendor that provided services to Welded Construction, L.P., that its principal place of business is located at 1125 N. Military Avenue, Green Bay, Wisconsin 54303, and that it is a limited liability company residing in and subject to the laws of the State of Wisconsin. The Defendant denies the balance of the allegations contained in Paragraph 15. The Defendant affirmatively alleges that it ceased business operations in 2018 and currently has no assets.

**FACTUAL BACKGROUND**

16. Answering Paragraph 16, the Defendant admits that the Debtors were a mainline pipeline construction contractor headquartered in Perrysburg, Ohio. The Defendant also admits that the *Declaration of Frank Pometti in Support of Debtors' Chapter 11 Petitions and First-Day Motions* speaks for itself.

17. Answering Paragraph 17, the Defendant admits the allegations contained therein.
18. Answering Paragraph 18, the Defendant admits the allegations contained therein

19. Answering Paragraph 19, the Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegations therein, and therefore denies them.

20. Answering Paragraph 20, the Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegations therein, and therefore denies them.

21. Answering Paragraph 21, the Defendant admits the allegations contained therein.

22. Answering Paragraph 22, the Defendant admits that it entered into a Construction Subcontract with the Plaintiff to perform certain services for the Plaintiff. The Defendant further admits that Exhibit A lists the three payments received by the Defendant in the Preference Period. The Defendant denies the remaining allegations of Paragraph 22.

23. Answering Paragraph 23, the Defendant admits that it conducted business with the Defendant pursuant to the Construction Subcontract and held a debt owed by the Plaintiff. The Defendant denies the remaining allegations of Paragraph 23.

24. Answering Paragraph 24, the Defendant admits that the Plaintiff purchased services from the Defendant pursuant to the Construction Subcontract and those payments are identified in Exhibit A.

25. The allegations of Paragraph 25 appear to be legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant admits that the Plaintiff is seeking to avoid all transfers of an interest of the Debtors' property made by the applicable Debtor(s) to Defendant within the Preference Period. The Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegation that the Plaintiff has completed an analysis of all readily available information of the Debtors, and therefore denies the allegation.

26. The allegations of Paragraph 26 appear to be legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant admits that Plaintiff has determined that one or more of the Plaintiff made transfers of an interest of the Debtors' property to or for the benefit of Defendant during the Preference Period through payments aggregating to an amount not less than \$489,916.86. The Defendant further admits that Exhibit A lists the three transfers.

27. Answering Paragraph 27, the Defendant lacks information or knowledge sufficient to form a belief as to the allegation that the Plaintiff performed its own due diligence evaluation of the reasonably knowable affirmative defenses available to the Defendant, and therefore denies the allegation. The Defendant admits the remaining allegations in Paragraph 27.

28. Answering Paragraph 28, the Defendant admits that the Plaintiff has determined that it may avoid some or all of the Transfers. The Defendant lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in Paragraph 28, and therefore denies the allegation.

29. The allegations of Paragraph 29 appear to be legal conclusions or statements to which no response is required.

30. The allegations of Paragraph 30 appear to be legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant affirmatively alleges that the Transfers are subject to affirmative defenses. The Defendant further admits that 11 U.S.C. § 547(g) places the burden of proof for nonavoidability of the Transfers on the Defendant.

**CLAIMS FOR RELIEF**

**COUNT I**

**(Avoidance of Preference Period Transfers – 11 U.S.C. § 547)**

31. Answering Paragraph 31, the Defendant restates its answers to the foregoing Paragraphs as if set forth herein.

32. Answering Paragraph 32, the Defendant admits the allegations contained therein.

33. Answering Paragraph 33, the Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegations therein, and therefore denies them.

34. Answering Paragraph 34, the Defendant admits that it was a creditor at the time of each Transfer by virtue of supplying the Plaintiff services pursuant the Construction Subcontract and that the Plaintiff was obligated to pay in accordance with the Construction Subcontract. The Defendant denies the remaining allegations of Paragraph 34.

35. Answering Paragraph 35, the Defendant admits the allegations contained therein.

36. Answering Paragraph 36, the Defendant admits the allegations contained therein.

37. Answering Paragraph 37, the Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegation that each transfer was made while the Debtors were insolvent, and therefore denies the allegation. The remaining allegation of Paragraph 37 appears to be a legal conclusion or statement to which no response is required. To the extent a response is required, the Defendant admits that 11 U.S.C. § 547(f) presumes debtors to be insolvent on and during the ninety days immediately preceding the Petition Date.

38. Answering Paragraph 38, the Defendant admits the allegations contained therein.

39. Answering Paragraph 39, the Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegations therein, and therefore denies them.

40. Answering Paragraph 40, the Defendant denies the allegations contained therein.

**COUNT II**  
**(Avoidance of Fraudulent Conveyance – 11 U.S.C. § 548)**

41. Answering Paragraph 41, the Defendant restates its answers to the foregoing Paragraphs as if set forth herein.

42. Answering Paragraph 42, the Defendant denies the allegations contained therein.

A. Answering Paragraph 42.A, the Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies them.

B. Answering Paragraph 42.B, the Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies them.

C. Answering Paragraph 42.C, the Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies them.

43. Answering Paragraph 43, the Defendant denies the allegations contained therein.

**COUNT III**  
**(Recovery of Avoided Transfers – 11 U.S.C. § 550)**

44. Answering Paragraph 44, the Defendant restates its answers to the foregoing Paragraphs as if set forth herein.

45. Answering Paragraph 45, the Defendant denies the allegations contained therein.

46. Answering Paragraph 46, the Defendant admits that it was the initial transferee for the transfers and the person for whose benefit the transfers were made. The Defendant denies the remaining allegations of Paragraph 46.

47. Answering Paragraph 47, the Defendant denies the allegations contained therein.

**COUNT IV**  
**(Disallowance of all Claims – 11 U.S.C. § 502(d) and (j))**

48. Answering Paragraph 48, the Defendant restates its answers to the foregoing Paragraphs as if set forth herein.

49. Answering Paragraph 49, the Defendant denies the allegations contained therein.

50. Answering Paragraph 50, the Defendant admits that it has not paid the amounts of the transfers. The Defendant denies the remaining allegations of Paragraph 50.

51. The allegations of Paragraph 51 appear to be legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant admits that 11 U.S.C. § 502(d) requires the court to disallow any claim from an entity which is avoidable under 11 U.S.C. §§ 547 or 548, unless that entity has paid the amount for which it is liable.

52. The allegations of Paragraph 52 appear to be legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant admits that 11 U.S.C. § 502(j) allows a claim that has been allowed or disallowed to be reconsidered for cause.

**AFFIRMATIVE DEFENSES**

Tract asserts the following affirmative defenses to the Complaint:

1. The Transfers were made in the ordinary course of business.
2. Tract reserves all rights to assert any affirmative defenses based on facts learned in discovery.



Dated: December 9, 2020  
Wilmington, Delaware

Respectfully submitted,

**POLSINELLI PC**

/s/ Christopher A. Ward

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