

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

WELDED CONSTRUCTION, L.P., *et al.*,<sup>1</sup>

Debtors.

)  
) Chapter 11  
)

) Case No. 18-12378 (CSS)  
)

) (Jointly Administered)  
)

) **Hrg. Date: September 1, 2021 at 1:00 p.m. (ET)**  
) **Obj. Deadline: Aug. 11, 2021 at 4:00 p.m. (ET)**

**POST-EFFECTIVE DATE DEBTORS' AMENDED MOTION, PURSUANT TO  
SECTION 105(a) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019,  
FOR AN ORDER (I) APPROVING THE SETTLEMENT OF FEDERAL  
INSURANCE COMPANY'S 503(b)(9) CLAIM AND (II) AMENDING THE  
LITIGATION FUNDING AND COOPERATION AGREEMENT**

The above-captioned debtors and debtors in possession (together, the “Debtors” and, following the Effective Date, the “Post-Effective Date Debtors”), through Cullen D. Speckhart, solely in her capacity as Plan Administrator, hereby submit this amended motion (this “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to section 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) and rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving the resolution by and between the Post-Effective Date Debtors and Federal Insurance Company (“Federal” or the “Surety”) (i) fixing and allowing Federal’s administrative claim pursuant to section 503(b)(9) of the Bankruptcy Code (the “503(b)(9) Claim”) and (ii) amending that certain *Litigation Funding and Cooperation Agreement* between the Debtors, Federal, and the Official Committee of Unsecured Creditors of Welded Construction L.P., et al. (the “Cooperation Agreement”).

<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). The mailing address for each of the Debtors is P.O. Box 470, Perrysburg, OH 43552-0470.



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## **JURISDICTION**

1. The Court has jurisdiction over these Chapter 11 Cases (defined below) and this 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. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue of these chapter 11 cases and this Motion is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief sought herein are section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

## **BACKGROUND**

### **A. General Background**

3. On October 22, 2018 (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code (together, these “Chapter 11 Cases”). Factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the *Declaration of Frank Pometti in Support of Debtors’ Chapter 11 Petitions and First Day Motions*. D.I. 4.

4. On June 25, 2020, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the Amended Chapter 11 Plan of Welded Construction, L.P. and Welded Construction Michigan, LLC* [D.I. 1505] (the “Confirmation Order”) confirming the *Amended Chapter 11 Plan of Welded Construction, L.P. and Welded Construction Michigan, LLC* (as confirmed, the “Plan”), a copy of which is attached to the Confirmation Order as Exhibit A.<sup>2</sup>

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed in the Plan.

5. The Effective Date of the Plan occurred on July 31, 2020 [D.I. 1555].

6. Pursuant to paragraph 19 of the Confirmation Order, as of the Effective Date, Cullen D. Speckhart was appointed as Plan Administrator under the terms of the Plan Administrator Agreement (the “PAA”). The Confirmation Order approved the PAA and authorized the Debtors to perform thereunder. Confirmation Order ¶¶ 18-19.

7. The Plan provides that the Post-Effective Date Debtors “shall have the authority (a) to file, withdraw or litigate to judgment objections to Claims; (b) to settle, compromise or Allow any Claim or Disputed Claim without any further notice to or action, order or approval by the Bankruptcy Court; (c) to amend the Schedules in accordance with the Bankruptcy Code; and (d) to administer and adjust the claims register to reflect any such settlements or compromises without any further notice to or action, order or approval by the Bankruptcy Court.” Plan § 8.1.

8. Under the Plan and PAA, the Plan Administrator is empowered to, among other things, “object to Claims as provided in this Plan, and prosecute such objections [as well as] compromise and settle any issue or dispute regarding the amount, validity, priority, treatment or allowance of any Claim.” Plan § 5.5.3(iv), (v); PAA § 1(b)(vi), (viii).

**B. Facts Specific to the Relief Requested**

9. In conjunction with their performance under various construction contracts associated with a 96-mile expanse of the Atlantic Sunrise natural gas pipeline (the “Williams/ASR Project”) for Transcontinental Gas Pipe Line Company, LLC, an affiliate of The Williams Companies, Inc. (together, “Williams”), the Debtors were required to provide payment and performance assurances to their contract counterparties in the form of surety bonds. Federal, on behalf of and at the request of the Debtors, issued Performance Bond no. 8219-24-58, in the amount of \$454,471,254, relating to the Williams/ASR Project (the “Surety Bond”).

10. On January 10, 2019, the Court entered an order [D.I. 403] (the “Bar Date Order”) establishing February 28, 2019 at 5:00 p.m. (ET) (the “General Bar Date”) as the deadline by which all persons and entities, other than governmental units, must file a proof of claim based on claims against the Debtors that arose prior to the commencement of these Chapter 11 Cases, including requests for allowance and payment of claims under section 503(b)(9) of the Bankruptcy Code.

11. On February 22, 2019, Federal and the Debtors entered into that certain *Stipulation By and Among Federal and the Debtors Extending the General Bar Date Solely with Respect to 503(b)(9) Claims*, extending the General Bar Date for Federal through and including 5:00 p.m. (ET) on April 30, 2019, solely as it pertains to the deadline in these Chapter 11 Cases for Federal to file a proof of claim with respect to any administrative claims under section 503(b)(9) of the Bankruptcy Code (the “Federal 503(b)(9) Deadline”). *See* D.I. 517. The Court entered an order approving the stipulation on February 26, 2019. *See* D.I. 520. The Federal 503(b)(9) Deadline was further extended several times by agreement of the Debtors. *See* D.I. 694 and 809. The Debtors agreed to further extend the Federal 503(b)(9) Deadline pending the Court’s consideration of this Motion.

### **C. Federal’s Claims**

12. Federal has asserted at least three claims in the Debtors’ estates. First on February 26, 2019, Federal asserted Claim Number 522 against Welded Construction Michigan, LLC in the amount of \$55,897,580 plus contingent and unliquidated amounts (“Claim 522”). Next on February 27, 2019, Federal asserted Claim Number 529 against Welded Construction, L.P. asserting a non-priority unsecured claim in the amount of \$524,868,834, plus contingent and unliquidated amounts, including unliquidated amounts entitled to priority under 11 U.S.C. §

503(b)(9) (“Claim 529”). Also on February 27, 2019, Federal asserted Claim Number 551 against Welded Construction L.P. asserting a non-priority unsecured claim in the amount of \$524,868,834, plus contingent and unliquidated amounts, including unliquidated amounts entitled to priority under 11 U.S.C. § 503(b)(9) (“Claim 551” and together with Claim 522 and Claim 529, collectively, the “Surety Bond Claims”).

13. The Surety Bond Claims seek recovery of: (i) the aggregate penal limit of the Surety Bond; (ii) Federal’s 503(b)(9) Claim; (iii) bond premiums and charges under the Surety Bond, plus interest, costs and attorneys’ fees; and (iv) a liquidated general unsecured claim for almost \$26 million on account of payments made to subcontractors for the Williams/ASR Project through and including February 19, 2019 by Federal under the Surety Bond. A majority of the subcontractors that provided goods and services on the Williams/ASR Project have submitted claims against Federal related to the project.

14. Prior to filing the Original Motion (defined below), Federal asserted a liquidated amount of \$1,381,429.84 was owed on account of the 503(b)(9) Claim. This amount stemmed from certain payments made by Federal under the Surety Bond to subcontractors and vendors that provided various goods to the Debtors in the twenty (20) days prior to the Petition Date (the “503(b)(9) Period”). Upon making such Surety Bond payments, Federal was assigned the rights and claims of such subcontractors and vendors against the Debtors, including any applicable claims under section 503(b)(9) of the Bankruptcy Code. The Debtors disputed the asserted amount of the 503(b)(9) Claim.

15. Federal and the Debtors previously reached a compromise to allow the 503(b)(9) Claim in the amount of \$800,000. On July 15, 2020, the Debtors filed the original version of this

Motion (the “Original Motion”) which sought to allow the 503(b)(9) Claim in this amount. *See* D.I. 1531.

16. Prior to the hearing on the Original Motion, Federal asserted additional amounts were owed on account of the 503(b)(9) Claim, which assertions the Debtors, and subsequently the Post-Effective Date Debtors, have disputed. The hearing on the Original Motion has since been adjourned while the parties engaged in further informal discovery and negotiations concerning the increased 503(b)(9) Claim.

17. The parties have engaged in substantial efforts to review and reconcile the 503(b)(9) Claim since the filing of the Original Motion. The parties examined invoices of subcontractors and vendors that received Surety Bond payments for goods provided to the Debtors during the 503(b)(9) Period. Federal eventually asserted an amended 503(b)(9) Claim of \$2,951,820.85.

#### **D. The Williams Litigation Funding Agreement**

18. On May 3, 2019, Debtor Welded Construction, L.P. (“Welded”) initiated an adversary proceeding in this Court against Transco and two of its affiliates, Williams and Williams Partners Operating LLC, Adv. Pro. No. 19-50194 (CSS) (the “Williams Litigation”). As set forth more fully in its complaint, Welded asserts that the defendants are improperly withholding or are otherwise liable for an amount in excess of \$70 million, among other actions, for breaching the parties’ contract and additional damages, fees, penalties and interest. Welded pleaded several counts against the defendants, including breach of contract, breach of implied covenants, tortious interference with contractual relationships, turnover of estate property, declaratory judgment for violation of the automatic stay, impermissible setoff, unjust enrichment, objecting to Transco’s two proofs of claim (Claim numbers 632 & 636), declaratory judgment that no amounts are owed

in connection with post-petition reconciliation of invoices, and violation of a Pennsylvania state statute governing Pennsylvania construction contracts. The Williams Litigation is ongoing and remains pending before the Court.

19. In connection with the Williams Litigation, on May 22, 2019, the Court entered its *Order Approving Litigation Funding and Cooperation Agreement* [D.I. 475], which approved the Cooperation Agreement. The Cooperation Agreement resolved Federal's assertion of equitable-subrogation rights, secured funding for the Williams Litigation, and established a protocol to share the net proceeds of the recovery in such litigation. Federal agreed to fund up to \$2.5 million (with no interest or fees and subject to increase with prior written consent of the parties) for fees and costs actually incurred by the Debtors in prosecuting or defending the claims of the Debtors arising under or in relation to the Williams Litigation (the "Initial Federal Litigation Funding"). The Initial Federal Litigation Funding is secured by a lien solely in any litigation proceeds and only to the extent of the funded amount. As of the date hereof, the Initial Federal Litigation Funding has been fully advanced by Federal.

#### **E. Resolution of the 503(b)(9) Claim**

20. The Post-Effective Date Debtors reviewed their books and records, as well as numerous claims and invoices relied upon by Federal to support the increased 503(b)(9) Claim. Following this analysis and reconciliation, the Post-Effective Date Debtors and Federal engaged in extensive, good faith, and arms' length negotiations and reached an agreement regarding the 503(b)(9) Claim as follows, and as set forth more fully in the stipulation attached to the Proposed Order as **Exhibit 1** (the "Settlement"):<sup>3</sup>

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<sup>3</sup> The following is a summary of the Settlement and is qualified in its entirety by reference to the stipulation attached as **Exhibit 1** to the Proposed Order (the "Stipulation"), the terms of which control.

- a) The 503(b)(9) Claims in each of the Surety Bond Claims shall be deemed liquidated and Allowed in the single, aggregate amount of \$1,758,000 (the “503(b)(9) Claim Payment”);
- b) Federal shall pay an additional amount of \$1,400,000 (“Additional Federal Funding”) to cover fees and costs actually incurred to prosecute or defend the Post-Effective Date Debtors’ claims and defenses in the Williams Litigation (“Litigation Costs”), which amount may be credited by Federal as a reduction in the 503(b)(9) Claim Payment below the allowed amount of \$1,758,000; provided, however that Federal shall receive the 503(b)(9) Claim Payment in full and that the Additional Federal Funding must be paid to the Post-Effective Date Debtors in full in good, cleared funds, subject to the additional conditions set forth in the Settlement Stipulation.
- c) The Post-Effective Date Debtors agree to fund up to a total of \$3,200,000 in Litigation Costs, subject to the timing of funding set forth in the Settlement Stipulation.
- d) Paragraph 1 of the Cooperation Agreement shall be amended and restated to provide, in summary, the following:

Litigation Costs. The Surety agrees to fund up to a maximum of \$3,900,000 (including, without limitation, the Additional Federal Funding), subject to the timing of funding and rights against the Recovery set forth below, subject to increase with the prior written consent of the Parties (the “Surety Contribution”) for fees and costs actually incurred in prosecuting the claims and defenses of the Debtor<sup>4</sup> arising under or in relation to the Williams Claims (the “Williams Litigation”) and the Estate (as defined in the Settlement Stipulation) agrees to fund up to a maximum of \$3,200,000, subject to the timing of funding and rights against the Recovery set forth below, subject to increase with the prior written consent of the Parties (the “Estate Contribution” and together with the Surety Contribution, collectively, the “Litigation Fund”) for fees and costs actually incurred in the Williams Litigation as follows:

- i. First, Federal has previously funded to the Debtors and the Post-Effective Date Debtors, as applicable, \$2,500,000 for fees and costs actually incurred by the Debtor in the Williams Litigation and such amount is credited in full toward satisfaction of the Surety Contribution;
- ii. Second, the Post-Effective Debtors will fund the next \$2,500,000 of fees and costs actually incurred by the Debtor in the Williams Litigation (the “Initial Estate Litigation Funding”);

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<sup>4</sup> The introductory paragraph of the Cooperation Agreement shall be amended so that the defined term “Debtor” shall refer to the Post-Effective Date Debtors on and after the Effective Date of the Plan.



- iii. Third, following the full payment of the Initial Estate Litigation Funding and written notice (the “First Notice”) of such payment by the Post-Effective Date Debtors to Federal by its counsel, Federal, pursuant to written Federal Reserve wire transfer instructions in the First Notice, shall pay the Post-Effective Date Debtors in cash \$700,000 for fees and costs actually incurred by the Debtor in the Williams Litigation (the “First Supplemental Federal Litigation Funding”);
  - iv. Fourth, following the full payment of the First Supplemental Federal Litigation Funding, the Post-Effective Date Debtors shall fund the next \$700,000 for fees and costs actually incurred by the Debtor in the Williams Litigation (the “Supplemental Estate Litigation Funding”);
  - v. Fifth, following the full payment of the Supplemental Estate Litigation Funding and written notice (the “Second Notice”) of such payment by the Post-Effective Date Debtors to Federal by its counsel, Federal, pursuant to written Federal Reserve wire transfer instructions in the Second Notice, shall pay the Post-Effective Date Debtors in cash \$700,000 for fees and costs actually incurred by the Debtor in the Williams Litigation.
- e) Paragraph 2 of the Cooperation Agreement shall be amended and restated in its entirety to provide, among other things, that:
- i. In the event of any recovery by the Debtor as a result of a judgment in, or settlement of, the Williams Litigation (the “Recovery”), the Debtor and the Surety shall each be reimbursed only from and to the extent of the Recovery for all amounts advanced by each such Party into the Litigation Fund (to the extent that such amounts exceed the applicable maximum amounts of the Surety Contribution or the Estate Contribution set forth above, such excess shall have been consented to in writing by each of the Parties). The Surety shall be granted a first priority lien to secure the Surety Contribution on only the Recovery and on no other assets or property of the Post-Effective Date Debtor, the Michigan Debtor or its estate, the Estate or the proceeds thereof, which Surety lien shall be allocated on a *pari passu basis* with the Estate Contribution and a related Debtor charge against the Recovery and to the extent each Party has provided Litigation Funding, and which Surety lien and related charge of the Debtor against the Recovery for the Estate Contribution shall be approved by the Bankruptcy Court as a condition of this Agreement. The reimbursements to Debtor and Surety under this paragraph shall be made prior to any other disposition of the Recovery. For the avoidance of doubt, the Estate’s charge against the Recovery for the Estate Contribution shall have the effect of a lien on the Recovery as it relates to the Surety lien and the relative priority of payment out of the Recovery. In the event that there is no Recovery or the Recovery is less than the amount advanced in the Litigation Fund, the Surety shall have a

general unsecured, non-priority claim against the Debtor for the amounts advanced under this Agreement by Surety that are unreimbursed.

- f) Paragraph 3(a) of the Cooperation Agreement is hereby amended and restated in its entirety to, among other things, provide:
  - i. The Estate and the Surety shall each receive reimbursement of all amounts advanced for the Williams Litigation in accordance with Paragraph 2 with the remaining proceeds after such reimbursement defined for purposes of this Agreement as the “Net Proceeds,” and
- g) For services performed in connection with the Williams Litigation, Young Conaway Stargatt & Taylor, LLP and AlixPartners, LLP each shall suspend further periodic rate increases above the current rates now in effect through the remainder of the Williams Litigation, provided that such rates may be increased in the future upon further written agreement of Federal and the Post-Effective Date Debtors.

### **RELIEF REQUESTED**

21. By this Motion, the Post-Effective Date Debtors request entry of the Proposed Order, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, approving the Settlement to allow the 503(b)(9) Claim in the amount of \$1,758,000 and provide for the treatment of the allowed 503(b)(9) Claim summarized above and as set forth more fully in the Proposed Order.

### **BASIS FOR RELIEF REQUESTED**

22. Bankruptcy Rule 9019(a) provides that “on motion by the trustee and after a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). The Third Circuit has enumerated four factors that should be considered in determining whether a settlement should be approved: “(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” *Meyers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *accord Will v. Nw. Univ. (In re*

*Nutraquest, Inc.*), 434 F.3d 639, 644 (3d Cir. 2006) (finding that the *Martin* factors are useful when analyzing a settlement of a claim against the debtor as well as a claim belonging to the debtor).

23. The decision to approve a settlement “is within the sound discretion of the bankruptcy court.” *In re World Health Alts., Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006); *see also In re Neshaminy Office Bldg. Assocs.*, 62 B.R. 798, 803 (E.D. Pa. 1986) (cited with approval in *Martin*). The bankruptcy court should not substitute its judgment for that of the debtor. *See Neshaminy Office Bldg. Assocs.*, 62 B.R. at 803. The bankruptcy court is not to decide the numerous questions of law or fact raised by litigation, but rather should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness. *See Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983); *see also World Health Alts.*, 344 B.R. at 296 (“[T]he court does not have to be convinced that the settlement is the best possible compromise. Rather, the court must conclude that the settlement is within the reasonable range of litigation possibilities.” (internal citations and quotations omitted)).

24. The Settlement of the 503(b)(9) Claim by and between Federal and the Post-Effective Date Debtors is reasonable, fair, and in the best interests of the Post-Effective Date Debtors and all of their stakeholders. Absent the Settlement, the dispute regarding the validity of the 503(b)(9) Claim would have to be litigated with no assurance of a favorable outcome for the Post-Effective Date Debtors and, the time and resources that such litigation would require could threaten creditor recoveries and consume the Post-Effective Date Debtors’ limited resources, to the detriment of their estates and their creditors. The Settlement was the product of substantial good-faith discussions and negotiations between Federal and the Post-Effective Date Debtors, and the agreement embodied therein falls well above the lowest point in the range of reasonableness.

In addition, as discussed below, the applicable *Martin* factors weigh in favor of approving the Settlement.

**A. The Probability of Success in Litigation**

25. Had the Parties failed to reach a consensual resolution with respect to the 503(b)(9) Claim, the Post-Effective Date Debtors would have been forced to litigate the details underlying the provision of goods with respect to hundreds of invoices, at a significant cost, uncertainty, and risk to them and their estates. Among other things, this litigation would likely require the Post-Effective Date Debtors and Federal to subpoena records from numerous subcontractors and vendors. By contrast, the Settlement provides for a cost-effective resolution of these matters, as well as finality and certainty for the Post-Effective Date Debtors, their estates, and creditors and other parties in interest in these Chapter 11 Cases. The aggregate value of the Settlement is consistent with the Post-Effective Date Debtors' estimates of the 503(b)(9) Claims based on the Post-Effective Date Debtors' analysis of its books and records. In light of the foregoing, the first *Martin* factor weighs significantly in favor of approving the Settlement.

**B. The Likely Difficulties in Collection**

26. The Post-Effective Date Debtors do not believe that this factor is applicable to the Settlement, thus it should be considered neutral or not applicable.

**C. The Complexity of Litigation Involved and the Expense, Inconvenience, and Delay Necessarily Attending It**

27. The third factor in *Martin*'s four-factor test weighs in favor of approval of the Settlement because, in the absence of the Settlement, these Chapter 11 Cases would be burdened by additional expense and delay, to the detriment of the Post-Effective Date Debtors' estates and stakeholders. The present dispute concerning the validity of portions of the 503(b)(9) Claim is highly fact-intensive and, absent a settlement, would likely require the Parties to proceed to

litigation of the validity of each of the numerous invoices supporting the 503(b)(9) Claim, which would be a complex, lengthy, expensive, and burdensome process—a process that the Settlement wholly avoids.

28. Accordingly, the third factor of *Martin*'s four-factor test weighs in favor of the Court approving the Settlement.

#### **D. Paramount Interests of Creditors**

29. Entry into the Settlement serves the paramount interest of the Post-Effective Date Debtors' various creditors. As noted above, the Settlement will allow the Post-Effective Date Debtors to avoid further litigation and focus their limited resources on winding down their affairs and these Chapter 11 Cases in a timely and efficient manner. Indeed, obviating litigation of the 503(b)(9) Claim's validity will allow the Parties and their professionals to focus on consummating the Plan and other important post-Effective Date matters. Additionally, the allowed amount of the 503(b)(9) Claim is approximately 40% less than the total amount asserted by Federal to be entitled to 503(b)(9) administrative expense priority. Moreover, the Settlement provides for funding of the Williams Litigation, the successful resolution of which is anticipated to enhance recoveries of all creditors of the Post-Effective Date Debtors. Accordingly, the final *Martin* factor weighs heavily in favor of the Court approving the Settlement.

30. Finally, the Settlement is a sound exercise of the Post-Effective Date Debtors' business judgment. The Settlement is the product of extensive arms'-length negotiations between Federal and the Post-Effective Date Debtors—and their respective representatives—and is in the best interest of the Post-Effective Date Debtors' estates and creditors. In light of the above, the Settlement: (i) is fair and equitable; (ii) represents a compromise that rests well above the lowest point in the range of reasonableness; (iii) avoids the expense, delay, inconvenience, and

uncertainty that would attend any litigation of the validity of the 503(b)(9) Claim; and (iv) advances the paramount interests of creditors. Therefore, the Settlement satisfies Bankruptcy Rule 9019 and should be approved by the Court.

### **NOTICE**

31. The Post-Effective Date Debtors will provide notice of this Motion to: (i) the United States Trustee for the District of Delaware; (ii) counsel for Federal; and (iii) all parties that, as of the filing of this Motion, have requested notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Post-Effective Date Debtors submit that no other or further notice is necessary.

### **CONCLUSION**

WHEREFORE, for the reasons set forth herein, the Post-Effective Date Debtors respectfully request entry of the Proposed Order, substantially in the form attached hereto as **Exhibit A**, (i) approving the Settlement by and between Federal and the Post-Effective Date Debtors of the 503(b)(9) Claim; (ii) amending the Cooperation Agreement; and (iii) granting such other and further relief as may be just and equitable.

Dated: July 28, 2021  
Wilmington, Delaware

**BLANK ROME LLP**

/s/ Jose F. Bibiloni

Josef W. Mintz (DE No. 5644)

Jose F. Bibiloni (DE No. 6261)

1201 Market Street, Suite 800

Wilmington, Delaware 19801

Telephone: (302) 425-6400

Facsimile: (302) 425-6464

E-mail: Mintz@BlankRome.com

JBibiloni@BlankRome.com

-and-

Michael B. Schaedle (*pro hac vice*)

John E. Lucian (*pro hac vice*)

One Logan Square

130 N. 18th Street

Philadelphia, Pennsylvania 19103

Telephone: (215) 569-5500

Facsimile: (215) 569-5555

Email: Schaedle@BlankRome.com

Lucian@BlankRome.com

*Counsel to the Post-Effective Date Debtors*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:

WELDED CONSTRUCTION, L.P., *et al.*,<sup>1</sup>

Debtors.

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) Chapter 11  
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) Case No. 18-12378 (CSS)  
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) (Jointly Administered)  
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) **Hrg. Date: September 1, 2021 at 1:00 p.m. (ET)**  
) **Obj. Deadline: Aug. 11, 2021 at 4:00 p.m. (ET)**

**NOTICE OF POST-EFFECTIVE DATE DEBTORS' AMENDED MOTION,  
PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND  
BANKRUPTCY RULE 9019, FOR AN ORDER (I) APPROVING THE SETTLEMENT  
OF FEDERAL INSURANCE COMPANY'S 503(b)(9) CLAIM AND (II) AMENDING  
THE LITIGATION FUNDING AND COOPERATION AGREEMENT**

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (together, the "Debtors" and, following the Effective Date, the "Post-Effective Date Debtors"), have filed the attached *Post-Effective Date Debtors' Amended Motion, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, for an Order (I) Approving the Settlement of Federal Insurance Company's 503(b)(9) Claim and (II) Amending the Litigation Funding and Cooperation Agreement* (the "Motion").

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **August 11, 2021 at 4:00 p.m. (ET)** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 N. Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of any objection upon the undersigned counsel to the Post-Effective Date Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON **SEPTEMBER 1, 2021 AT 1:00 P.M. (ET)** BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 5TH FLOOR, COURTROOM NO. 6, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS OR RESPONSES TO THE MOTION ARE TIMELY FILED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED THEREIN WITHOUT FURTHER NOTICE OR A HEARING.

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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). The mailing address for each of the Debtors is P.O. Box 470, Perrysburg, OH 43552-0470.



Dated: July 28, 2021  
Wilmington, Delaware

**BLANK ROME LLP**

/s/ Jose F. Bibiloni

Josef W. Mintz (DE No. 5644)

Jose F. Bibiloni (DE No. 6261)

1201 Market Street, Suite 800

Wilmington, Delaware 19801

Telephone: (302) 425-6400

Facsimile: (302) 425-6464

E-mail: Mintz@BlankRome.com

JBibiloni@BlankRome.com

-and-

Michael B. Schaedle (*pro hac vice*)

John E. Lucian (*pro hac vice*)

One Logan Square

130 N. 18th Street

Philadelphia, Pennsylvania 19103

Telephone: (215) 569-5500

Facsimile: (215) 569-5555

Email: Schaedle@BlankRome.com

Lucian@BlankRome.com

*Counsel to the Post-Effective Date Debtors*

**EXHIBIT A**

**Proposed Order**

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

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In re:

WELDED CONSTRUCTION, L.P., *et al.*,<sup>1</sup>

Debtors.

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) Case No. 18-12378 (CSS)  
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) (Jointly Administered)  
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) **Re: D.I. \_\_**

**ORDER (I) APPROVING THE SETTLEMENT OF FEDERAL INSURANCE  
COMPANY'S 503(b)(9) CLAIM AND (II) AMENDING THE LITIGATION  
FUNDING AND COOPERATION AGREEMENT**

Upon consideration of the motion (the "Motion")<sup>2</sup> of the Post-Effective Date Debtors for entry of an order, pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, approving the Settlement entered into by and between Federal and the Post-Effective Date Debtors, as more fully described in the Motion; and having determined 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 having determined 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 having determined that this matter is a 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 having determined that the relief requested in the Motion is in the best interests of the Post-Effective Date Debtors, their estates, creditors, and other parties in interest; and having determined that the relief requested

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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). The mailing address for each of the Debtors is P.O. Box 470, Perrysburg, OH 43552-0470.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

in the Motion is justified by the facts and circumstances; and having determined 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 is approved in its entirety pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.
3. The Settlement Stipulation, attached hereto as **Exhibit 1** and incorporated herein by reference as if set forth in full, is approved.
4. The Post-Effective Date 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.
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.

**EXHIBIT 1**

**Settlement Stipulation**

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

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

**STIPULATION BETWEEN THE POST-EFFECTIVE DATE DEBTORS  
AND FEDERAL INSURANCE COMPANY REGARDING SETTLEMENT  
OF FEDERAL’S 503(b)(9) CLAIM AND (II) AMENDING THE  
LITIGATION FUNDING AND COOPERATION AGREEMENT**

The Post-Effective Date Debtors, by and through the Plan Administrator on the one hand, and Federal Insurance Company (together with its affiliates and successors, “Federal” or the “Surety” and together with the Post-Effective Date Debtors, each a “Party” and collectively, the “Parties”), on the other hand, hereby enter into this stipulation (“Stipulation”) with respect to the settlement of Federal’s 503(b)(9) Claim and amending the Litigation Funding and Cooperation Agreement (the “Cooperation Agreement”).<sup>2</sup>

**RECITALS**

**WHEREAS**, on October 22, 2018 (the “Petition Date”), each of the Debtors filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

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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). The mailing address for each of the Debtors is P.O. Box 470, Perrysburg, OH 43552-0470.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning set forth in the Plan (defined below) or the *Post-Effective Date Debtors’ Amended Motion, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, For an Order Approving the Settlement of Federal Insurance Company’s 503(B)(9) Claim.*

**WHEREAS**, Federal has asserted at least three claims in the Debtors' estates. First on February 26, 2019, Federal asserted Claim Number 522 against Welded Construction Michigan, LLC in the amount of \$55,897,580 plus contingent and unliquidated amounts ("Claim 522"). Next on February 27, 2019, Federal asserted Claim Number 529 ("Claim 529") against Welded Construction, L.P. asserting a non-priority unsecured claim in the amount of \$524,868,834, plus contingent and unliquidated amounts, including unliquidated amounts entitled to priority under 11 U.S.C. § 503(b)(9) (the "503(b)(9) Claim"). Also on February 27, 2019, Federal asserted Claim Number 551 against Welded Construction L.P. asserting a non-priority unsecured claim in the amount of \$524,868,834, plus contingent and unliquidated amounts, including an unliquidated 503(b)(9) Claim ("Claim 551") and together with Claim 522 and Claim 529, collectively, the "Surety Bond Claims").

**WHEREAS**, Federal and the Debtors previously reached a compromise to allow the 503(b)(9) Claim in the amount of \$800,000. On July 15, 2020, the Debtors filed a Motion (the "Original Motion") which sought to approve a settlement reached between the Debtors and Federal to, inter alia, allow the 503(b)(9) Claim in the amount of \$800,000. *See* D.I. 1531.

**WHEREAS**, prior to the hearing on the Original Motion, Federal asserted additional amounts were owed on account of the 503(b)(9) Claim, which assertions the Debtors and subsequently the Post-Effective Date Debtors have disputed and have preserved rights in respect of the process of settling such Claim. The hearing on the Original Motion has since been adjourned without date while the parties engaged in further informal discovery and negotiations concerning the increased 503(b)(9) Claim.

**WHEREAS**, following substantial informal discovery, including a review of certain invoices of subcontractors and vendors that received payment from Federal under its surety bond

for goods provided to the Debtors during the 503(b)(9) Period, Federal asserted its proposed, aggregate 503(b)(9) Claim under the Surety Bond Claims in the amount of \$2,951,820.85.

**WHEREAS**, on May 3, 2019, Welded initiated an adversary proceeding in the Court against Transco and two of its affiliates, Williams and Williams Partners Operating LLC (Adv. Pro. No. 19-50194 (CSS)) that remains pending before the Court (the “Williams Litigation”).

**WHEREAS**, in connection with the referenced Williams Litigation, on May 22, 2019, the Court entered an order approving the Cooperation Agreement under which Federal agreed, among other things, to fund up to \$2,500,000 million (with no interest or fees and subject to increase with prior written consent of the parties) for fees and costs actually incurred by the Debtors in prosecuting or defending the claims of the Debtors arising under or in relation to the Williams Litigation (the “Initial Federal Litigation Funding”).

**WHEREAS**, as of the date hereof, the Initial Federal Litigation Funding has been fully advanced by Federal.

**WHEREAS**, on June 25, 2020, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the Amended Chapter 11 Plan of Welded Construction, L.P. and Welded Construction Michigan, LLC* [D.I. 1505] confirming the *Amended Chapter 11 Plan of Welded Construction, L.P. and Welded Construction Michigan, LLC* (as confirmed, the “Plan”).

The Plan, *inter alia*, incorporated the terms of the Cooperation Agreement.

**WHEREAS**, the Effective Date of the Plan occurred on July 31, 2020.

**WHEREAS**, the Parties have engaged in extensive, good faith, and arms’ length negotiations, have reached an agreement, and now wish to fix and allow the 503(b)(9) Claim and provide for additional funding for the Williams Litigation on the terms and conditions set forth herein.



**AGREEMENT**

**NOW, THEREFORE**, with the foregoing background incorporated by reference, the Parties, intending to be bound, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby stipulated and agreed to by and between the Parties as follows:

1. This Stipulation becomes effective upon the date that it is approved by a Final Order of the Court (the “Stipulation Date”).

2. Upon the Stipulation Date, the 503(b)(9) Claims asserted in each of the Surety Bond Claims shall be deemed liquidated and Allowed in the single, aggregate amount of \$1,758,000, which amount shall be paid by the Post-Effective Date Debtors in accordance with the terms of the Plan within ten (10) Business Days of the Stipulation Date (the “503(b)(9) Claim Payment”). The 503(b)(9) Claim Payment may be sent to the escrow account of Manier & Herod, P.C., upon written request by Federal to the Plan Administrator copied upon her general bankruptcy counsel, which request shall include detailed Federal Reserve wire instructions.

3. Federal shall pay an additional amount of \$1,400,000 (“Additional Federal Funding”) to cover fees and costs actually incurred to prosecute or defend the Post-Effective Date Debtors’ claims and defenses in the Williams Litigation (“Litigation Costs”), subject to the timing of funding set forth herein, which amount may be credited by Federal as a reduction in the 503(b)(9) Claim Payment below the allowed amount of \$1,758,000; provided, however that Federal shall receive the 503(b)(9) Claim Payment in full pursuant to this Stipulation and that the Additional Federal Funding must be paid to the Post-Effective Date Debtors in full in good, cleared funds pursuant to this Stipulation.

4. The Post-Effective Date Debtors agree to fund up to a total of \$3,200,000 in Litigation Costs, subject to the timing of funding set forth herein.

5. The introductory paragraph of the Cooperation Agreement shall be amended so that the defined term “Debtor” shall refer to the Post-Effective Date Debtors on and after the Effective Date of the Plan.

6. Paragraph 1 of the Cooperation Agreement is hereby amended and restated in its entirety as follows:

1. Litigation Costs. The Surety agrees to fund up to a maximum of \$3,900,000 (including, without limitation, the Additional Federal Funding), subject to the timing of funding and rights against the Recovery set forth below, subject to increase with the prior written consent of the Parties (the “Surety Contribution”) for fees and costs actually incurred in prosecuting the claims and defenses of the Debtor arising under or in relation to the Williams Claims (the “Williams Litigation”) and the Estate agrees to fund up to a maximum of \$3,200,000, subject to the timing of funding and rights against the Recovery set forth below, subject to increase with the prior written consent of the Parties (the “Estate Contribution” and together with the Surety Contribution, collectively, the “Litigation Fund”) for fees and costs actually incurred in the Williams Litigation as follows:

(a) First, Federal has previously funded to the Debtors and the Post-Effective Date Debtors, as applicable, \$2,500,000 for fees and costs actually incurred by the Debtor in the Williams Litigation and such amount is credited in full toward satisfaction of the Surety Contribution;

(b) Second, the Post-Effective Date Debtors shall fund the next \$2,500,000 for fees and costs actually incurred by the Debtor in the Williams Litigation (the “Initial Estate Litigation Funding”);

(c) Third, following the full payment of the Initial Estate Litigation Funding and written notice (the “First Notice”) of such payment by the Post-Effective Date Debtors to Federal by its counsel, Federal, pursuant to written Federal Reserve wire transfer instructions in the First Notice, shall pay the Post-Effective Date Debtors in cash \$700,000 for fees and costs actually incurred by the Debtor in the Williams Litigation (the “First Supplemental Federal Litigation Funding”);

(d) Fourth, following the full payment of the First Supplemental Federal Litigation Funding, the Post-Effective Date Debtors shall fund the

next \$700,000 for fees and costs actually incurred by the Debtor in the Williams Litigation (the “Supplemental Estate Litigation Funding”);

(e) Fifth, following the full payment of the Supplemental Estate Litigation Funding and written notice (the “Second Notice”) of such payment by the Post-Effective Date Debtors to Federal by its counsel, Federal, pursuant to written Federal Reserve wire transfer instructions in the Second Notice, shall pay the Post-Effective Date Debtors in cash \$700,000 for fees and costs actually incurred by the Debtor in the Williams Litigation.

The Litigation Fund, to be further identified in a confidential budget provided solely to the Parties, shall be used to pay the fees and expenses of Young Conaway Stargatt & Taylor, LLP (counsel to the Debtor), Lewis Brisbois Bisgard & Smith LLP, AlixPartners, LLP, litigation consultants, experts, contractors, and e-Discovery vendors related solely to the extent of work performed or costs incurred in connection with the Williams Litigation, but shall not be used to pay the fees and expenses of any other entity. Upon 30 days written notice to the other Party (the “Non-Terminating Party”), either the Debtor or the Surety (as applicable, the “Terminating Party”) may terminate the obligation to fund the remaining amount of such Party’s share of the Litigation Fund for any fees or costs incurred from and after the expiration of such notice period (a “Funding Termination Event”); *provided, however*, a decision by the Terminating Party not to fund any amounts in excess of such Terminating Party’s share of the Litigation Fund shall not be deemed a Funding Termination Event. Upon a Funding Termination Event where the Non-Terminating Party determines to proceed with prosecuting the Williams Litigation, the Terminating Party shall be entitled to reimbursement of any costs advanced by such Terminating Party under this Agreement *pro-rata* with any costs incurred by the Non-Terminating Party prior to any other disposition of the proceeds of a recovery in the Williams Litigation, if any, obtained from prosecution or settlement of the Williams Litigation. If a Funding Termination Event occurs, except with respect to *pro-rata* reimbursement of the Terminating Party’s litigation costs, the Terminating Party shall be deemed to have released its first priority interest and liens in and charge against the Recovery (as defined below). For avoidance of doubt, the Surety shall at all times retain its rights under the Indemnity Agreement, subject only to the terms of this Agreement.

7. Paragraph 2 of the Cooperation Agreement is hereby amended and restated in its entirety as follows:

2. Reimbursement of Surety from Litigation Proceeds. Unless there is a Funding Termination Event where the terms of Paragraph 1 shall apply, in the event of any recovery by the Debtor as a result of a judgment in, or settlement of, the Williams Litigation (the “Recovery”), the Debtor and the Surety shall each be reimbursed only from and to the extent of the Recovery for all amounts advanced by each such Party into the Litigation Fund (to the extent that such amounts exceed

the applicable maximum amounts of the Surety Contribution or the Estate Contribution set forth above, such excess shall have been consented to in writing by each of the Parties). The Surety shall be granted a first priority lien to secure the Surety Contribution on only the Recovery and on no other assets or property of the Post-Effective Date Debtor, the Michigan Debtor or its estate, the Estate or the proceeds thereof, which Surety lien shall be allocated on a *pari passu basis* with the Estate Contribution and a related Debtor charge against the Recovery and to the extent each Party has provided Litigation Funding, and which Surety lien and related charge of the Debtor against the Recovery for the Estate Contribution shall be approved by the Bankruptcy Court as a condition of this Agreement. The reimbursements to Debtor and Surety under this paragraph shall be made prior to any other disposition of the Recovery. For the avoidance of doubt, the Estate's charge against the Recovery for the Estate Contribution shall have the effect of a lien on the Recovery as it relates to the Surety lien and the relative priority of payment out of the Recovery. In the event that there is no Recovery or the Recovery is less than the amount advanced in the Litigation Fund, the Surety shall have a general unsecured, non-priority claim against the Debtor for the amounts advanced under this Agreement by Surety that are unreimbursed.

8. Paragraph 3(a) of the Cooperation Agreement is hereby amended and restated in its entirety as follows:

(a) Unless there is a Funding Termination Event where the terms of Paragraph 1 shall apply, the Estate and the Surety shall each receive reimbursement of all amounts advanced for the Williams Litigation in accordance with Paragraph 2 with the remaining proceeds after such reimbursement defined for purposes of this Agreement as the "Net Proceeds."

9. For the avoidance of doubt, the terms of the Cooperation Agreement shall not otherwise be altered by this Stipulation, and the Net Proceeds (as defined in the Cooperation Agreement) shall be distributed in accordance with the Cooperation Agreement and Plan.

10. For services performed in connection with the Williams Litigation, Young Conaway Stargatt & Taylor, LLP and AlixPartners, LLP each agree to suspend further periodic rate increases above the current rates now in effect through the remainder of the Williams Litigation, provided that they may increase their rates in the future upon further written agreement of the Parties.

11. In accordance with the Plan, the ultimate payment of the 503(b)(9) Claim, as set forth herein, shall be in full and final satisfaction, settlement and release of the 503(b)(9) Claim and all amounts that could be asserted in any of the Surety Bond Claims pursuant to Section 503(b)(9) of the Bankruptcy Code.

12. On the Stipulation Date, the Claims Agent shall be directed to amend the claims register to reflect the allowance of the 503(b)(9) Claim within the Surety Bond Claims hereunder, and, upon the ultimate payment of the 503(b)(9) Claim, the Claims Agent shall mark the 503(b)(9) portion of the Surety Bond Claims fully paid, satisfied and released, pursuant to the Plan.

13. The Parties acknowledge that each and every covenant, warranty, release and agreement contained herein shall inure to the benefit of, and be binding upon, the agents, subsidiaries, employees, officers, directors, assigns, and successors in interest of the Parties, including, but not limited to, subsequent transferees or appointed representatives of the Post-Effective Date Debtors' estate.

14. This Stipulation is the entire agreement between the Parties hereto with respect of the subject matter hereof. This Stipulation supersedes any and all agreements, whether written or oral, that may have previously existed between the Parties with respect to the matters set forth in this Stipulation. No statements, promises, or representations have been made by any Party to any other, or relied upon, and no consideration has been offered, promised, expected or held out other than as may be expressly provided herein.

15. Any ambiguities are not to be construed against either Party solely due to the identity of the drafter.

16. This Stipulation shall not be modified, altered or amended without the proper written consent of all Parties hereto.

17. This Stipulation shall be binding upon the successors and assigns of the Parties hereto, including trustees and estate representatives.

18. Each person signing this Stipulation represents and warrants that s/he has been duly authorized and has the requisite authority to execute and deliver this Stipulation on behalf of such Party and to bind her/his respective Party to the terms and conditions of the Stipulation.

19. This Stipulation may be executed in counterparts by counsel, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same Stipulation. Delivery of an executed counterpart of a signature page of this Stipulation by telecopy or electronic mail in PDF shall be as effective as delivery of a manually executed copy of this Stipulation.

20. The Court shall retain jurisdiction to enforce the terms and conditions of this Stipulation to the full extent allowed under law.

*[Remainder of Page Intentionally Left Blank]*

AGREED TO IN SUBSTANCE AND FORM THIS 28th DAY OF JULY, 2021:

**BLANK ROME LLP**

/s/ Josef W. Mintz

Josef W. Mintz (DE No. 5644)  
Jose F. Bibiloni (DE No. 6261)  
1201 Market Street, Suite 800  
Wilmington, Delaware 19801  
Telephone: (302) 425-6400  
Facsimile: (302) 425-6464

-and-

Michael B. Schaedle (*pro hac vice*)  
John E. Lucian (*pro hac vice*)  
One Logan Square  
130 N. 18th Street  
Philadelphia, Pennsylvania 19103  
Telephone: (215) 569-5500  
Facsimile: (215) 569-5555

*Counsel to the Post-Effective Date Debtors*

**MANIER & HEROD, P.C.**

/s/ Michael E. Collins

Sam H. Poteet Jr.  
Michael E. Collins  
1201 Demonbreun Street  
Nashville, TN 37203  
Telephone: (615) 742-9350  
Facsimile: (615) 242-4203

*Counsel to Federal Insurance Company and  
Affiliated Sureties*