

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

In re: Chapter 11
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:
WELDED CONSTRUCTION, L.P., *et al.*, Case No. 18-12378 (CSS)
:
Debtors.¹ (Jointly Administered)
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Re: Docket No. 1755
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**CERTIFICATE OF NO OBJECTION REGARDING
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 undersigned hereby certifies as follows:

On July 28, 2021, 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, filed the *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* [Docket No. 1755] (the "Motion"). Pursuant to the notice of Motion, the deadline to object to approval of the relief requested in the Motion was August 11, 2021 at 4:00 p.m. (ET) (the "Response Deadline").

Prior to the Response Deadline, the Post-Effective Date Debtors received an informal response to the Motion from Transcontinental Gas Pipe Line Company, LLC, The Williams Companies, Inc., and Williams Partners Operating LLC (collectively, the "Williams Parties"). The

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 c/o P.O. Box 470, Perrysburg, OH 43552-0470.



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Response Deadline was extended to September 7, 2021 at 5:00 p.m. (ET) for the Williams Parties. Leading up to the Williams Parties' extended Response Deadline, the Post-Effective Date Debtors conferred with the Williams Parties and provided them with detailed information and documents relating to the Motion.

As of the date hereof, the Williams Parties have not filed a formal response to the Motion or contacted the Post-Effective Date Debtors to request a further extension to the Response Deadline. The undersigned is aware of no pending formal or informal objection or other responsive pleading to the relief requested in the Motion. The undersigned has caused the review of the Court's docket in these cases and no answer, objection, or other responsive pleading to the Motion appears thereon.

Accordingly, the undersigned respectfully requests entry of the proposed form of Order attached hereto as **Exhibit A** (which form of order remains unchanged from the form of order filed with the Motion, except the caption has been updated) at the earliest convenience of the Court.

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Dated: September 9, 2021
Wilmington, Delaware

BLANK ROME LLP

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Counsel to the Post-Effective Date Debtors

EXHIBIT A

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

In re:

WELDED CONSTRUCTION, L.P., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 18-12378 (CSS)
)
) (Jointly Administered)
)
)
) **Re: D.I. 1755**

**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")² 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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² 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:

WELDED CONSTRUCTION, L.P., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-12378 (CSS)

(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”).²

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.

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 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.

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

BLANK ROME LLP

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