

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	
	)	Chapter 11
)	
WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹	)	Case No. 18-12378 (KG)
)	
Debtors.	)	(Jointly Administered)
)	
	)	Hearing Date: November 19, 2018 at 11:00 a.m. (ET)
	)	Objection Deadline: November 9, 2018 at 4:00 p.m. (ET)
)	
	)	Ref. Docket Nos. 7 and 35

NOTICE OF FINAL HEARING AND ENTRY OF INTERIM ORDER, PURSUANT TO SECTIONS 105(a), 363(b) AND 364 OF THE BANKRUPTCY CODE, (I) AUTHORIZING (A) PAYMENT OF PREPETITION OBLIGATIONS INCURRED IN THE ORDINARY COURSE OF BUSINESS IN CONNECTION WITH INSURANCE PROGRAMS, INCLUDING PAYMENT OF POLICY PREMIUMS AND BROKER FEES, AND (B) CONTINUATION OF INSURANCE PREMIUM FINANCING PROGRAMS; AND (II) AUTHORIZING BANKS TO HONOR AND PROCESS CHECK AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO

TO: (I) THE OFFICE OF THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE; (II) THE OFFICE OF THE UNITED STATES ATTORNEY FOR THE DISTRICT OF DELAWARE; (III) THE INTERNAL REVENUE SERVICE; (IV) THE DEBTORS’ THIRTY (30) LARGEST UNSECURED CREDITORS (EXCLUDING INSIDERS); (V) THE SECURITIES AND EXCHANGE COMMISSION; (VI) COUNSEL TO THE DEBTORS’ POST-PETITION LENDERS; AND (VII) ALL PARTIES THAT, AS OF THE FILING OF THIS NOTICE, HAVE REQUESTED NOTICE IN THESE CHAPTER 11 CASES PURSUANT TO BANKRUPTCY RULE 2002

PLEASE TAKE NOTICE that, on October 22, 2018, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) filed the **Debtors’ Motion for Interim and Final Orders, Pursuant to Sections 105(a), 363 and 364 of the Bankruptcy Code, (I) Authorizing (A) Payment of Prepetition Obligations Incurred in the Ordinary Course of Business in Connection with Insurance Programs, Including Payment of Policy Premiums and Broker Fees, and (B) Continuation of Insurance Premium Financing Programs; and (II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto** [Docket No. 7] (the “Motion”), a copy of which is attached hereto as Exhibit 1. On October 23, 2018, the United States Bankruptcy Court for the District of

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.



Delaware entered an order [Docket No. 35] (the “Interim Order”), a copy of which is attached hereto as Exhibit 2,² approving the Motion on an interim basis. A copy of the proposed final order approving the Motion (the “Final Order”) is attached hereto as Exhibit 3.

PLEASE TAKE FURTHER NOTICE that any objections to entry of the Final Order must be filed on or before **November 9, 2018 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of any objection upon the following parties so as to be received on or before the Objection Deadline: (a) the Debtors: Welded Construction, L.P., 26933 Eckel Road, Perrysburg, Ohio, 43551, Attn: Stephen D. Hawkins; (b) proposed counsel to the Debtors: Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801, Attn: M. Blake Cleary, Esq. and Sean M. Beach, Esq.; (c) counsel for the DIP Lender: Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166, Attn: Michael A. Rosenthal, Esq. and Matthew K. Kelsey, Esq.; (d) counsel to any official committee appointed in these chapter 11 cases; and (e) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jaclyn Weissgerber, Esq.

PLEASE TAKE FURTHER NOTICE THAT A FINAL HEARING ON THE MOTION WILL BE HELD ON NOVEMBER 19, 2018 AT 11:00 A.M. (ET) BEFORE THE HONORABLE KEVIN GROSS AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 6TH FLOOR, COURTROOM NO. 3, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION ON A FINAL BASIS WITHOUT FURTHER NOTICE OR A HEARING.

[Signature page follows]

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Interim Order.

Dated: October 24, 2018
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Justin H. Rucki

M. Blake Cleary (No. 3614)

Sean M. Beach (No. 4070)

Justin H. Rucki (No. 5304)

Rodney Square

1000 North King Street

Wilmington, DE 19801

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Proposed Counsel to the Debtors

EXHIBIT 1

Motion

ordinary course of business, and (ii) authorizing banks and other financial institutions (collectively, the “**Banks**”) to honor and process check and electronic transfer requests related to the foregoing. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Frank A. Pometti in Support of Debtors’ Chapter 11 Petitions and First Day Motions and Applications* (the “**First Day Declaration**”),² filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter 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 (the “**Amended Standing Order**”). 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 is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are sections 105(a), 363(b) and 364 of the Bankruptcy Code.

BACKGROUND

A. General

2. On the date hereof (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in these chapter 11 cases and no request has been made for the appointment of a trustee or an examiner.

² Each capitalized term used but not defined herein shall have the meaning ascribed to it in the First Day Declaration.

3. Additional information regarding the Debtors' businesses, their capital structure, and the circumstances leading to the filing of these chapter 11 cases is set forth in the First Day Declaration.

B. Insurance Programs³

4. The Debtors maintain, among others, insurance programs for directors and officers, employment practices and fiduciary liability, general liability, pollution, business automobile, crime, and umbrella and excess liability, as described below (collectively, the "**Insurance Programs**"), through several different insurance carriers (each, an "**Insurance Carrier**," and collectively, the "**Insurance Carriers**"), including under the insurance contracts listed on Exhibit A attached hereto.⁴

i. D&O, Employment Practices and Fiduciary Liability Insurance Program

5. As is common with businesses of this kind, the Debtors maintain insurance coverage for all of their directors and officers that covers, among other things, defense costs, settlements, and court awards from claims brought by third parties alleging that an insured is liable for an error, misstatement, misleading statement, improper act, omission, neglect or breach of duty (the "**D&O, Employment Practices and Fiduciary Liability Insurance**

³ The descriptions of the Insurance Programs and the related PFA (as defined below) provided herein are intended only as a summary, and the actual terms of the foregoing shall govern in the event of any inconsistency with the descriptions set forth herein.

⁴ In addition to the Insurance Programs discussed herein and the insurance contracts listed on Exhibit A attached hereto, the Debtors maintain an insurance policy with respect to the Debtors' workers' compensation program (the "**Workers' Compensation Program**"). This policy is described in the *Debtors' Motion for Entry of Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 507(a)(4) and 507(a)(5) of the Bankruptcy Code, (A) Authorizing (I) Payment of Prepetition Employee Wages, Salaries and Other Compensation; (II) Payment of Prepetition Employee Business Expenses; (III) Contributions to Prepetition Employee Benefit Programs and Continuation of Such Programs in the Ordinary Course; (IV) Payment of Workers' Compensation Obligations; (V) Payments for Which Prepetition Payroll Deductions Were Made; (VI) Payment of all Costs and Expenses Incident to the Foregoing Payments and Contributions; and (VII) Payment to Third Parties of all Amounts Incident to the Foregoing Payments and Contributions; and (B) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto* (the "**Employee Wage Motion**") filed concurrently herewith. Any relief requested with respect to the Workers' Compensation Program is requested in the Employee Wage Motion.

Program”). The D&O, Employment Practices and Fiduciary Liability Insurance Program also provides certain coverage for employment practices and fiduciary liability.

6. Prior to the Petition Date, the D&O, Employment Practices and Fiduciary Liability Insurance Program was renewed until August 1, 2019. The aggregate annual premium for the D&O, Employment Practices and Fiduciary Liability Insurance Program is approximately \$65,000. The Debtors believe that there are no outstanding amounts under the D&O, Employment Practices and Fiduciary Liability Insurance Program as of the Petition Date.

ii. General Liability, Automobile, Pollution, Inland Marine, Crime, and Umbrella and Excess Insurance Programs

7. The Debtors maintain certain commercial liability insurance policies, which insure the Debtors for, among other things, products, accident, premises, and personal injury liability (the “**General Liability Insurance Program**”). Prior to the Petition Date, the General Liability Insurance Program was renewed until May 1, 2019. The aggregate annual premium for the General Liability Insurance Program, which is paid through a 25% down payment and 9 equal monthly installment payments, is approximately \$707,000. The Debtors believe that, as of the Petition Date, approximately \$36,000 in premiums are outstanding under the General Liability Insurance Program.

8. The Debtors also maintain automobile insurance (the “**Automobile Insurance Program**”). Prior to the Petition Date, the Automobile Insurance Program was renewed until May 1, 2019. The aggregate annual premium for the Automobile Insurance Program is approximately \$423,000. As is the case with annual premium for the General Liability Insurance Program, the annual premium for the Automobile Insurance Program is paid via a 25% down payment and 9 equal monthly installment payments. The Debtors believe that

there are approximately \$60,000 in outstanding premiums under the Automobile Insurance Program as of the Petition Date.

9. The Debtors maintain insurance that provides coverage for liability arising from job site pollution (the “**Pollution Insurance Program**”). Prior to the Petition Date, the Pollution Insurance Program was renewed until May 1, 2019. The aggregate annual premium (exclusive of any finance charges under the PFA) for the Pollution Insurance Program is approximately \$214,000. The Debtors do not believe that there are any outstanding amounts under the Pollution Insurance Program as of the Petition Date other than the portion of the annual premium that, as set forth more fully below and on Exhibit A attached hereto, has been financed pursuant to the PFA.

10. The Debtors also maintain inland marine insurance (the “**Inland Marine Insurance Program**”). Prior to the Petition Date, the Inland Marine Insurance Program was renewed until May 1, 2019. The aggregate annual premium (exclusive of any finance charges under the PFA) for the Inland Marine Insurance Program is approximately \$493,000. With the exception of the portion of the annual premium under the Inland Marine Insurance Program that, as set forth more fully below and on Exhibit A attached hereto, has been financed pursuant to the PFA, the Debtors do not believe that there are any outstanding amounts under such Insurance Program as of the Petition Date.

11. The Debtors also maintain crime insurance that insures the Debtors for crimes committed against the Debtors, such as employee theft, forgery, and computer fraud (the “**Crime Insurance Program**”). Prior to the Petition Date, the Crime Insurance Program was renewed until May 1, 2019. The aggregate annual premium (exclusive of any finance charges under the PFA) for the Crime Insurance Program is approximately \$4,200. With the exception

of the premiums under the Crime Insurance Programs that, as set forth more fully below and on Exhibit A attached hereto, have been financed pursuant to the PFA, the Debtors do not believe that there are any outstanding amounts under the Crime Insurance Program as of the Petition Date.

12. The Debtors also maintain a number of umbrella and excess insurance policies that insure the Debtors for certain losses in excess of the coverage provided by the Debtors' primary insurance policies (the "**Umbrella and Excess Insurance Program**"). Prior to the Petition Date, the Umbrella and Excess Insurance Program was renewed until approximately May 1, 2019. The aggregate annual premium (exclusive of any finance charges under the PFA) for the Umbrella and Excess Insurance Program is approximately \$1,178,000. With the exception of the portion of the premium under the Umbrella and Excess Insurance Program that, as set forth more fully below and on Exhibit A attached hereto, has been financed pursuant to the PFA, the Debtors do not believe that there are any outstanding amounts under the Umbrella and Excess Insurance Program as of the Petition Date.

C. Financed Insurance Programs

13. It is not economically advantageous for the Debtors to pay the premiums on all of the Insurance Programs on an annualized basis. Accordingly, from time to time, in the ordinary course of business, the Debtors finance the premiums on certain of the Insurance Programs. As of the Petition Date, the Debtors were financing portions of the Pollution Insurance Program, Inland Marine Insurance Program, Crime Insurance Program, and the Umbrella and Excess Insurance Program (collectively, the "**Financed Insurance Programs**"),⁵ pursuant to a premium finance agreement (the "**PFA**"), with Prime Rate Premium Finance

⁵ Exhibit A attached hereto identifies which of the Insurance Programs are Financed Insurance Programs.

Corporation, Inc. (the “**Premium Financing Company**”), a copy of which is attached hereto as Exhibit B.

14. The following is a summary of the significant terms of the PFA:

<u>Monthly Payment</u>	<u>Number of Monthly Payments</u>	<u>Start Date for Monthly Payments</u>
\$151,443.44	8	June 1, 2018

15. Prior to the Petition Date, the Debtors made the monthly payment due under the PFA for October 2018. To the extent that such payment did not clear the Debtors’ bank account prior to the commencement of these chapter 11 cases, the Debtors seek to honor such payment pursuant to this Motion. In addition, the Debtors seek authority to continue to make the remaining payments under the PFA in the ordinary course of business.

16. The Debtors also seek authority to renew or enter into new premium financing programs, as necessary, under substantially similar terms, in the ordinary course of business.

D. Broker Fees

17. In connection with the Insurance Programs, the Debtors obtain brokerage and risk management services from McGriff, Seibels & Williams, Inc. (the “**Broker**”). The Broker assists the Debtors in obtaining comprehensive insurance for the Debtors’ operations by, among other things, assisting the Debtors’ with the design and development of the Insurance Programs and the procurement and negotiation of the Insurance Programs and the PFA, and enable the Debtors to obtain those policies and the PFA on advantageous terms at competitive rates.

18. Pursuant to a service agreement with the Broker (the “**Brokerage Agreement**”), the Debtors pay the Broker an annual fee for the Broker’s services, which is

payable in three equal installments on May 1, 2018, August 1, 2018, and November 1, 2018 (the “**Broker Fees**”). The Brokerage Agreement commenced on May 1, 2018, and terminates on May 1, 2020, unless terminated sooner in accordance with its terms. The Broker Fees for the annual period beginning on May 1, 2018 were \$300,000; of that amount, \$100,000 is outstanding as of the Petition Date.

19. The Debtors seek authority to satisfy the outstanding Broker Fees in the ordinary course of business.

RELIEF REQUESTED

20. By this Motion, the Debtors request the Court to enter the Proposed Orders, (i) authorizing, but not directing, the Debtors to (a) continue and, to the extent necessary, renew the Insurance Programs and pay policy premiums, and broker fees arising thereunder or in connection therewith, including such prepetition obligations arising in the ordinary course of business, and (b) continue the Financed Insurance Programs and enter into new premium financing programs, as necessary, under substantially similar terms, in the ordinary course of business, and (ii) authorizing the Banks to honor and process check and electronic transfer requests related thereto.

BASIS FOR RELIEF

A. The Court Should Authorize, But Not Direct, the Debtors, in Their Discretion, to Make Necessary Payments Related to the Insurance Programs to Maintain Existing Insurance Coverage

21. Maintaining the Debtors’ insurance coverage under the Insurance Programs is a crucial ordinary-course-of-business transaction. Authority to pay any prepetition amounts that may be due and owing related to the Insurance Programs—to the extent that the Debtors determine that such payment is necessary to avoid cancellation, default, alteration,

assignment, attachment, lapse, or any form of impairment of the coverage, benefits or proceeds provided under the Insurance Programs—is necessary, as the insurance coverage provided under the Insurance Programs is essential for preserving the value of the Debtors’ assets and, in most cases, such coverage is required by the various contracts and state and federal laws that govern the Debtors. See, e.g., 28 U.S.C. § 959(b) (chapter 11 debtor obligated under federal law to operate chapter 11 business according to the laws of the states where business and properties are located). Further, under the chapter 11 operating guidelines issued by the United States Trustee for Region 3 pursuant to 28 U.S.C. § 586, the Debtors are obligated to maintain during these chapter 11 cases certain types of insurance coverage, which coverage is provided by certain of the policies included in the Insurance Programs.

22. In addition, the Debtors may need to renew or replace certain of their Insurance Programs during the pendency of these chapter 11 cases. The nonpayment of any premiums, deductibles, or related fees under any of the Insurance Programs could result in one or more of the Insurance Carriers increasing future insurance premiums, declining to renew the insurance policies or refusing to enter into new insurance agreements with the Debtors. If the Insurance Programs lapse without renewal, the Debtors may be exposed to substantial liability for first party property claims and third party liability claims, to the detriment of all parties in interest.

23. Similarly, the services provided by the Broker is critical to ensuring that the Debtors obtain the necessary insurance coverage on advantageous terms at competitive rates, and the Broker has a significant amount of institutional knowledge regarding the Debtors’ insurance needs. If the Debtors were forced to replace the Broker, the Debtors would necessarily

be required to spend time, energy, and resources getting a new insurance broker up to speed on the Debtors' insurance needs.

24. Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). A bankruptcy court may use its equitable powers under section 105 of the Bankruptcy Code to permit a debtor in possession to pay prepetition claims when payment is necessary to effectuate a debtor's bankruptcy goals and essential to the continued operation of the business. See Miltenberger v. Logansport. C. & S.W.R. Co., 106 U.S. 286 (1882); In re Lehigh & New Eng. Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981); In re Just for Feet, Inc., 242 B.R. 821, 825 (D. Del. 1999) (under necessity of payment doctrine prepetition claims may be paid if essential to the continued operation of the business during reorganization); In re Columbia Gas Sys., Inc., 171 B.R. 189, 192 (Bankr. D. Del. 1994) (recognizing that necessity of payment doctrine authorizes payment of prepetition claims when “such payment is essential to the continued operation of the business”).

25. In addition, the Court may authorize the Debtors to pay prepetition premiums to maintain insurance coverage under section 363(b) of the Bankruptcy Code. In particular, section 363(b)(1) of the Bankruptcy Code provides that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” Thus, under this section, a court may authorize a debtor to pay certain prepetition claims. See Ionosphere Clubs, 98 B.R. 174, 175-77 (S.D.N.Y. 1989) (affirming lower court order authorizing payment of prepetition wages pursuant to section 363(b) of the Bankruptcy Code); In re UAL Corp., Case No. 02-48191 (ERW) (Bankr. N.D. Ill. Dec. 9, 2002) (authorizing payment of prepetition claims under section 363 of the Bankruptcy Code as an out-of-the-

ordinary-course transaction); In re Jillian's Entm't Holdings, Inc., Case No. 04-33192 (DTS) (Bankr. W.D. Ky. June 22, 2004).

26. Furthermore, reflecting the recognition that payment of pre-petition claims associated with a debtor's insurance program is critical to a debtor's chapter 11 efforts, courts in this District have routinely granted the relief requested herein in other chapter 11 cases.

B. The Court Should Authorize, But Not Direct, the Debtors, in Their Discretion, to Make Necessary Payments Under the PFA and Renew the PFA and/or Enter Into New Premium Financing Agreements In the Ordinary Course of Business

27. If the Debtors are unable to continue making payments under the PFA (to the extent that any such payments are outstanding as of the Petition Date), the Premium Financing Company may be permitted to terminate the Financed Insurance Programs. The Debtors would then be required to obtain replacement insurance on an expedited basis and likely at a significantly increased cost. If the Debtors are required to obtain replacement insurance and to pay a lump sum premium for such insurance in advance, this payment may be the same or greater than what the Debtors currently pay to the Premium Financing Company under the PFA. Even if the Premium Financing Company is not permitted to terminate the Financed Insurance Programs, any interruption of payments would severely and adversely affect the Debtors' ability to finance premiums for future policies. Thus, in view of the importance of maintaining the related insurance coverage and preserving their cash flow by financing the insurance premiums, the Debtors believe that it is in the best interest of their estates and creditors for the Court to authorize the Debtors to honor the obligations under the PFA. Any other alternative would likely require considerable cash expenditures and would be detrimental to the Debtors' chapter 11 efforts.

28. Generally, the PFA grants the Premium Financing Company a security interest in the Financed Insurance Programs, including all unearned premium, return premium, dividend and loss payments thereof. Security interests created by premium finance arrangements generally are recognized as secured claims in bankruptcy to the extent of the amount of unearned premiums financed pursuant to such agreements. See TIFCO, Inc. v. U.S. Repeating Arms Co. (In re U.S. Repeating Arms Co.), 67 B.R. 990, 994-95 (Bankr. D. Conn. 1986); Drabkin v. A.I. Credit Corp. (In re Auto-Train Corp.), 9 B.R. 159, 164-66 (Bankr. D.D.C. 1981). Therefore, if the Debtors fail to make the required payments under the PFA, the Premium Financing Company could seek relief from the automatic stay, either to cancel the Financed Insurance Programs in accordance with the terms of the PFA or to seek adequate protection of its investment. See Universal Motor Express, 72 B.R. 208, 211 (Bankr. W.D.N.C. 1987) (recognizing that a default under the financing arrangement and the resulting decline in value of the unearned premiums justified relief from the automatic stay). Accordingly, the practical solution from the Debtors' perspective is to continue making the premium financing payments required under the PFA.

29. In addition, the Court should also authorize the Debtors to renew or enter into new premium finance agreements post-petition in the ordinary course of business.

30. Section 363(c)(1) of the Bankruptcy Code provides that "the trustee [or a debtor in possession] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). Section 363(b)(1) of the Bankruptcy Code provides that, "[t]he trustee [or debtor in possession], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1).

31. The Debtors submit that the renewal of the PFA and/or the execution of new premium finance agreements constitute transactions in the ordinary course of business, within the meaning of section 363(c)(1) of the Bankruptcy Code, that do not require prior bankruptcy court approval.

32. Neither the Bankruptcy Code nor its legislative history provide a framework for analyzing whether a transaction is in the ordinary course of business. The Third Circuit, however, has developed a two-part inquiry, including a “horizontal dimension” test and a “vertical dimension” test, for determining whether a transaction is in the ordinary course of business under section 363(c)(1). See In re Roth Am., Inc., 975 F.2d 949, 952 (3d Cir. 1992); see, e.g., In re Nellson Nutraceutical, Inc., 369 B.R. 787, 791 (Bankr. D. Del. May 24, 2007); Braunstein v. McCabe, 571 F. 3d 108, 124-25 (1st Cir. 2009). The horizontal dimension test focuses on whether, from an industry wide perspective, the transaction is “of the sort commonly undertaken by companies in that industry.” In re Roth Am., Inc., 975 F.2d 202 at 953. The vertical dimension test (or creditor’s expectation test) focuses on the vantage point of a hypothetical creditor and inquires whether the transaction subjects the creditor to economic risk of a nature different from those the creditor accepted when it decided to extend credit to the debtor. Id.

33. The Debtors believe that the renewal of the PFA and/or the execution of new premium finance agreements satisfies the “horizontal dimension” test because maintaining insurance coverage and entering into related premium financing agreements is a common industry practice. Drabkin v. A.I. Credit Corp., 800 F.2d 1153, 1154 (Fed. Cir. 1986) (Such a premium financing agreement is a “common commercial arrangement.”). The “vertical dimension” test is also satisfied because the maintenance of insurance under premium finance

agreements does not subject estate creditors to any economic risk, but rather, serves to protect them from economic risk. Accordingly, the renewal of the PFA and/or the execution of new premium finance agreements constitute “ordinary course” uses of estate property under section 363(c)(1) of the Bankruptcy Code. See In re Roth Am., 975 F.2d at 952 n.4 (citing U.S. v. Estate of Deutscher, 115 B.R. 592, 598-99 (M.D. Tenn. 1990), for the proposition that “trustee’s use of fund to . . . reinstate insurance was in ordinary course of business”).

34. Indeed, the Debtors submit that it may be outside the ordinary course of business for it to fail to renew the PFA or enter into new premium finance agreements to obtain insurance coverage. See In re Lavigne, 114 F.3d 379, 383-84 (2d Cir. 1994) (cancellation of insurance policy was not in the ordinary course of business). Nevertheless, out of an abundance of caution, the Debtors have filed this Motion seeking entry of the Proposed Orders, to the extent necessary, approving, under section 363 of the Bankruptcy Code, the Debtors’ post-petition renewal of the PFA and/or the execution of new premium finance agreements.

35. The Court may also authorize the Debtors to enter into new premium finance agreements pursuant to section 364(c)(2) of the Bankruptcy Code. Section 364(c)(2) authorizes, after notice and a hearing, a debtor in possession to obtain debt secured by a lien on property of the estate. See 11 U.S.C. § 364(c)(2). Under any new premium finance agreement, the counterparty would likely require that the Debtors grant a security interest in the unearned premiums under the financed policies. See generally In re Schwinn Bicycle Co., 200 B.R. 980, 982 (Bankr. N.D. III. 1996) (describing insurance premium financing agreements).

36. Section 364(c) authorizes a debtor, in the exercise of its business judgment, to incur secured debt if the debtor has been unable to obtain unsecured credit and the borrowing is in the best interests of the estates. See, e.g., In re Gen. Growth Props., Inc., 412

B.R. 122, 125-26 (Bankr. S.D.N.Y. May 14, 2009) (granting motion for post-petition financing upon finding that (a) “no comparable credit [was] available on more favorable terms”; (b) that the debtors needed post-petition financing to “to preserve [their] assets and continue their operations; and (c) that the terms and conditions of the DIP Documents had been negotiated in good faith); In re Budget Group, Inc., Case No. 02-12152, 2002 Bankr. LEXIS 1050 (Bankr. D. Del. Aug. 1, 2002) (authorizing funding of acquisition of property on a secured basis where acquired property was necessary to maintain operations and debtor could not obtain such funding on an unsecured basis); In re Ames Dept. Stores, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) (with respect to postpetition credit, courts “permit debtors-in-possession to exercise their basic business judgment consistent with their fiduciary duties”). Because a borrowing to maintain essential insurance coverage is in the best interests of the Debtors’ estates, the Court should authorize the Debtors to renew the PFA and/or execute new premium finance agreements post-petition.

37. Finally, courts in this District in other chapter 11 cases have regularly authorized debtors to continue their pre-petition, and enter into new post-petition, insurance premium financing agreements.

C. The Court Should Authorize the Banks to Honor and Process the Debtors’ Payments Related to the Insurance Programs, the PFA, and the Broker Fees

38. The Debtors also request the Court to authorize the Banks, when requested by the Debtors, in their discretion, to honor and process checks or electronic fund transfers drawn on the Debtors’ bank accounts to pay prepetition obligations described herein, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The

Debtors further request that all of the Banks be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

SATISFACTION OF BANKRUPTCY RULE 6003

39. Pursuant to Rule 6003(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within twenty-one (21) days of the Petition Date requires the Debtors to demonstrate that such relief "is necessary to avoid immediate and irreparable harm." As set forth throughout this Motion, any disruption of the Insurance Programs, including the Financed Insurance Programs and the related PFA, and the related services received by the Debtors from the Broker would substantially diminish or impair the Debtors' efforts in these chapter 11 cases to preserve and maximize the value of their estates.

40. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied, and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

41. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As set forth throughout this Motion, any disruption in, among other things, the Debtors' insurance coverage would be detrimental to the Debtors, their creditors and their estates, and would impair their ability to optimize their business performance at this critical time as they begin the chapter 11 process.

42. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable to the Proposed Orders.

RESERVATION OF RIGHTS

43. Nothing in the Proposed Orders or this Motion (i) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (ii) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates, (iii) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any of the Insurance Carriers or the Premium Financing Company, or (iv) shall be construed as a promise to pay a claim.

NOTICE

44. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) the Debtors' thirty (30) largest unsecured creditors (excluding insiders); (v) the Securities and Exchange Commission; and (vi) counsel to the Debtors' post-petition lenders. Notice of this Motion and any order entered hereon will be served in accordance with Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

45. The Debtors have not previously sought the relief requested herein from this or any other Court.

CONCLUSION

WHEREFORE, the Debtors request the entry of the Proposed Orders, granting the relief requested herein and such other and further relief as is just and proper.

Dated: October 22, 2018
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Justin H. Rucki

M. Blake Cleary (No. 3614)

Sean M. Beach (No. 4070)

Justin H. Rucki (No. 5304)

Rodney Square

1000 North King Street

Wilmington, DE 19801

Telephone: (302) 571-6600

Facsimile: (302) 571-1253

Proposed Counsel to the Debtors

EXHIBIT A

List of Insurance Contracts

<u>INSURANCE CARRIER</u>	<u>INSURANCE PROGRAM</u>	<u>POLICY NUMBER</u>	<u>EFFECTIVE DATE; MONTHS COVERED</u>	<u>FINANCED PROGRAM (YES/NO)</u>	<u>APPROXIMATE ANNUAL PREMIUM</u>
Navigators Insurance Company	D&O, Employment Practices and Fiduciary Liability	GA17DOL324874IV	Aug 1, 2018; 12	No	\$65,000
Zurich American Insurance Company	General Liability	GLO 9482433-06	May 1, 2018; 12	No	\$707,000
Zurich American Insurance Company	Automobile	BAP 9482441-06	May 1, 2018; 12	No	\$423,000
Indian Harbor Insurance Company	Pollution	CPL742027504	May 1, 2018; 12	Yes	\$214,000
The Charter Oak Fire Insurance Company	Inland Marine	QT-660-8733M872-COF-18	May 1, 2018; 12	Yes	\$493,000
Travelers Casualty and Surety Company of America	Crime	105588490	May 1, 2018; 12	Yes	\$4,200
Westchester Fire Insurance Company	Umbrella and Excess	G24380506 006	May 1, 2018; 12	Yes	\$760,000
Gemini Insurance Company	Umbrella and Excess	CEX09602680-00 I	May 1, 2018; 12	Yes	\$55,000
Great American Assurance Company	Umbrella and Excess	EXC2275155	May 1, 2018; 12	Yes	\$75,000
Liberty Mutual Insurance Company	Umbrella and Excess	ECO (18) 56 01 03 58	May 1, 2018; 12	Yes	\$230,000

<u>INSURANCE CARRIER</u>	<u>INSURANCE PROGRAM</u>	<u>POLICY NUMBER</u>	<u>EFFECTIVE DATE; MONTHS COVERED</u>	<u>FINANCED PROGRAM (YES/NO)</u>	<u>APPROXIMATE ANNUAL PREMIUM</u>
Westchester Fire Insurance Company	Umbrella and Excess	G27978289 003	May 1, 2018; 12	Yes	\$57,000

EXHIBIT B

PFA

471643

PRIME RATE PREMIUM FINANCE CORPORATION, INC.
 2141 Enterprise Dr. P.O. Box 100507
 Florence, South Carolina 29502-0507
OH License No. 234
 www.primeratepfc.com
 Phone: (800) 777-7458

PREMIUM FINANCE AGREEMENT
 ACCOUNT NO. OH-3024369

Insured Name: **WELDED CONSTRUCTION LP**
 PO BOX 470
 PERRYSBURG, OH 43552

Agent/Broker/Producer: **BB&T - MCGRIFF 9075**
 ATTN: CHRIS THOMAS
 2211 7TH AVE S
 BIRMINGHAM, AL 35233
 (205) 252-9871

Policy Eff. Date	Term	Policy Number	Name of Insurance Company and Name and Address of General Or Policy Issuing Agent	R	Type of Coverage	Total Premium
05/01/2018	12	QT6608733M872COF18	18779-CHARTER OAK FIRE INS CO	Y	57 INLAND MAR	\$492,918.00
05/01/2018	12	105588490	41535-TRAVELERS CASUALTY & SURETY CO AMER	Y	75 CRIME	\$4,240.00
See addendum for remaining policies detail.						\$1,392,029.10

Creditor: Prime Rate Premium Finance Corporation, Inc.			Federal Truth in Lending Disclosures		
(A) Total Premiums	(B) Cash Down Payment	(C) Amount Financed (The amount of credit provided to you or on your behalf)	(D) FINANCE CHARGE (The dollar amount the credit will cost you)	(E) Total of Payments (The amount you will have paid after you have made all payments as scheduled)	(F) ANNUAL PERCENTAGE RATE (The cost of your credit as a yearly rate)
\$1,889,187.10	\$700,000.00	\$1,189,187.10	* \$22,360.42	\$1,211,547.52	4.99 %
Your PAYMENT SCHEDULE will be:			* Includes a non-refundable service charge of \$20.00	You have the right to receive an Itemization of the Amount Financed	
No. of Payments	Amount of Payments	When Payments Are Due		<input checked="" type="checkbox"/> I want an Itemization <input type="checkbox"/> I do not want an Itemization	
8	\$151,443.44	On the 1 st Day of each month, Beginning 06/01/2018			
<p>Security: You are giving a security interest in any and all unearned or return premium(s) and dividends which may become due under the policy(ies) being purchased.</p> <p>Late Charge: You will be charged \$10.00 for any payment received more than 5 days after the due date. If the policy insures a commercial risk, you will be charged 5% of the payment on any payment received more than 5 days after the due date.</p> <p>Cancellation Charge: You will be charged a cancellation charge of \$10.00 if Prime Rate cancels any insurance policy in accordance with the terms of this Agreement.</p> <p>Prepayment: If you voluntarily prepay in full prior to the last installment due date you will not be charged a prepayment fee and you may be entitled to a refund of part of the finance charge.</p> <p>See Above and on the last page of this document for any additional information about non-payment default, any repayment in full before the scheduled date, and prepayment refunds and penalties.</p>					

In consideration of the payment(s) to be made by PRIME RATE PREMIUM FINANCE CORPORATION, INC. ("PR") to the above insurance companies ("Insurer(s)"), their agents, representatives, or producer, the ABOVE NAMED insured ("Insured") (jointly and severally if more than one):

- Promises to pay to the order of PR at the above address, the Total of Payments in accordance with the Payment Schedule set forth in the above Truth-in-Lending Disclosures as well as any other sums due pursuant to this Agreement.
- Irrevocably appoints PR as Attorney-In-Fact with full authority to affect cancellation of the policies covered hereby or any substitution, rewrite or renewal thereof in accordance with the provisions herein, to receive all sums assigned to PR or in which it has granted PR a security interest. PR may execute and deliver on behalf of the Insured all documents, forms and notices relating to the policies covered hereby in furtherance of this Agreement. The Power of Attorney is coupled with an interest and the powers given herein may be exercised by the Attorney-In-Fact, or its successors and assigns.
- Acknowledges that it has received a copy of all pages of this Agreement and if the borrower is a consumer, the Insured acknowledges that he has received a copy of PR's Privacy Statement.

THE INSURED AGREES TO THE PROVISIONS ABOVE AND ON THE FOLLOWING PAGE(S) OF THIS AGREEMENT

NOTICE: A. Read all pages of this Agreement before you sign. B. You are entitled to a completely filled in copy of this Agreement. C. Keep your copy of this Agreement to protect your legal rights. D. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge.

Welded Construction LP TJ Miller CFO 5/23/2018
 INSURED'S NAME SIGNATURE OF INSURED OR AUTHORIZED REPRESENTATIVE TITLE DATE

 INSURED'S NAME SIGNATURE OF INSURED OR AUTHORIZED REPRESENTATIVE TITLE DATE

AGENT/BROKER/PRODUCER'S CERTIFICATION

The Agent/Broker/Producer warrants and agrees: 1. The insurance policies listed on this Agreement are in force and the information and the premiums are correct. 2. The Insured has received a copy of this Agreement, has authorized this transaction and recognizes the security interest assigned herein. 3. All of PR's guidelines and eligibility requirements have been complied with. 4. A proceeding in bankruptcy, receivership or insolvency has not been instituted by or against the named Insured. 5. No audit or reporting form policies or policies subject to retrospective rating or minimum earned premiums are included, except as indicated. The deposit or provisional premiums are not less than anticipated premiums to be earned for the full term of the policies. 6. All of the policies are cancelable by the Insured and unearned premiums will be calculated on the standard short-rate or pro-rata tables. 7. To hold in trust for PR any payments made or credited to the insured through or to the undersigned, directly or indirectly, actually or constructively by the insurance companies or PR and to pay the monies as well as any unearned commissions to PR promptly upon demand to satisfy the outstanding indebtedness of the Insured. Any lien the undersigned has or may acquire in the return premiums arising out of the listed insurance policies is subordinated to PR's lien or security interest therein. There are no other liens on the unearned premiums and all premiums will be paid to the insurers.

THE UNDERSIGNED FURTHER WARRANTS THAT IT HAS RECEIVED THE DOWN PAYMENT AND ANY OTHER SUMS DUE AS REQUIRED BY THE AGREEMENT AND IS HOLDING SAME OR THEY ARE ATTACHED TO THIS AGREEMENT

 AGENT/BROKER/PRODUCER SIGNATURE OF AGENT/BROKER/PRODUCER TITLE DATE

OH 12 2.5 6619.28063

PRIME RATE PREMIUM FINANCE CORPORATION, INC.

2141 Enterprise Dr. P.O. Box 100507
 Florence, SC 29502-0507

www.primeratepfc.com
 Phone: (800) 777-7458

PREMIUM SERVICE AGREEMENT

ACCOUNT NO. OH-3024369

Insured Name: WELDED CONSTRUCTION LP
 PO BOX 470
 PERRYSBURG, OH 43552

Agent/Broker/Producer:

BB&T - MCGRUFF 9075
 ATTN: CHRIS THOMAS
 2211 7TH AVE S
 BIRMINGHAM, AL 35233
 (205) 252-9871

ADDENDUM

Policy Eff. Date	Term	Policy Number	Name of Insurance Company or General Agent or Policy Issuing Agent	R	Type of Coverage	Total Premium
05/01/2018	12	CPL742027504	50445-INDIAN HARBOR INS CO %SYNAPSE SERVICES LLC RTax \$10,209.10	Y	78 POLLUTION	\$204,182.00 \$10,209.10
05/01/2018	12	G24380506006	25551-WESTCHESTER FIRE INS CO %CRC INSURANCE SERVICES INC	Y	76 EXCESS LIAB	\$759,690.00
05/01/2018	12	ECO1856010358	24509-LIBERTY MUTUAL INS CO	Y	76 EXCESS LIAB	\$230,623.00
05/01/2018	12	G27978289003	25551-WESTCHESTER FIRE INS CO %CRC INSURANCE SERVICES INC	Y	76 EXCESS LIAB	\$57,200.00
05/01/2018	12	EXC2275155	1428-GREAT AMERICAN INS CO %CRC INSURANCE SERVICES INC	Y	76 EXCESS LIAB	\$75,000.00
05/01/2018	12	CEX0960268001	31913-GEMINI INSURANCE CO %CRC INSURANCE SERVICES INC RTax \$2,625.00	Y	76 EXCESS LIAB	\$52,500.00 \$2,625.00

REMAINING PROVISIONS OF PREMIUM FINANCE AGREEMENT

- (4) Assigns to PR as security for the total amount payable hereunder any and all unearned or return premiums and dividends which may become payable under the insurance policies covered by this Agreement and loss payments under said policies which reduce the unearned premiums (subject to any loss payee or mortgagee interests), and hereby authorizes and instructs its insurer(s) to pay such funds or proceeds to PR. The Insured gives to PR a security interest in all items mentioned in this paragraph. The Insured further grants to PR its interest which may arise under any state insurance guarantee fund relating to any policy shown on the front of this Agreement.
- (5) Agrees in the event of a default in payment of any installment, PR may cancel the policies covered hereby after giving the notice required as prescribed by law. In case of cancellation, the unpaid balance due to PR shall be immediately payable by the Insured. The Insured understands PR may collect and enforce repayment of the indebtedness evidenced hereby without recourse to any security underlying this Agreement. If cancellation occurs, the Insured agrees to pay a finance charge on the balance due at the contract rate of interest until that balance is paid in full or until such other date as permitted by law.
- (6) Agrees that any payments made to PR after Notice of Cancellation has been mailed to the insurer will be credited to the Insured's account and shall not constitute reinstatement or obligate PR to request reinstatement of any insurance policy. Any sum received from an insurer shall be credited to the Insured's indebtedness to PR, and any surplus shall be paid to whomever it is entitled. If the refund is less than \$3.00, no refund will be made. In case of a deficiency, the Insured shall remain liable and pay the same with interest as set forth above. The Insured will not be required to pay an amount due under this Agreement that is less than \$5.00.
- (7) May voluntarily prepay the full amount due and under certain conditions be entitled to receive a partial refund of the FINANCE CHARGE computed in accordance with the method prescribed by law, after deducting any fully earned charge permitted by law.
- (8) Understands that the FINANCE CHARGE begins to accrue as of the earliest Policy Effective Date, unless otherwise specified.
- (9) Authorizes PR to correct or remedy any error or omission in the completion of this Agreement; the Insured will be notified at the address shown hereon of any change in Blocks (A) thru (F), or in the Federal Truth-In-Lending Disclosures or in the itemization of the Amount Financed Disclosures.
- (10) Warrants that each of the policies covered hereunder (or a binder thereof), except for policies written through residual markets, has been issued to the Insured, is in full force and effect and that no other power of attorney or other encumbrance or assignment is in effect nor will same be put into effect, except for the interest of mortgagees or loss payees, and agrees that all rights conferred upon PR shall inure to PR's successors or assigns.
- (11) Agrees that, in the event the total premiums are greater than that shown hereon, or if the Insured requests additional premiums be added or additional premiums financed, this Agreement may be amended to reflect the actual premiums and the Insured will either (i) pay the difference in premium due or (ii) pay any required additional down payment and any additional finance charge permitted by law. In such event PR will forward the Insured a revision notice showing all information required by law.
- (12) Agrees that (i) PR assumes no liability as an insurer, (ii) this Agreement shall not be effective until a written acceptance is mailed by PR, (iii) singular words used herein shall be deemed plural and vice versa as the sense of the Agreement demands, (iv) if any court of competent jurisdiction finds any part or provision of this Agreement to be invalid or unenforceable, such findings shall not affect any other part or provision.
- (13) Agrees that if this transaction is for other than personal, family or household purposes or more than the amount set by federal law none of the provisions of the Federal Truth-In-Lending Act or the regulations promulgated thereunder shall apply.
- (14) Agrees that should a check be returned for insufficient or uncollected funds, PR may re-present the check electronically and collect a service fee electronically of \$10.00, plus any additional bank charges assessed.
- (15) Agrees that if payment is made by check, PR may use the check solely as a source document and as the basis for an electronic transaction. Receipt of the check will be deemed to be authorization for an ACH debit to the Insured's account.
- (16) Agrees that any refunds may be applied against any prior debts owed PR.
- (17) Agrees that the insurance agent or broker named in this Agreement is the Insured's agent, not PR's, and PR is not legally bound by anything the agent or broker represents to the Insured orally or in writing.
- (18) Agrees that the money paid by PR is only for the premium as determined at the time the insurance policy is issued. PR's payment shall not be applied by the insurance company to pay for any additional premiums owed by the Insured as a result of any type of misclassification of the risk. The Insured agrees to pay the company any additional premiums which become due for any reason. PR may assign to the company any rights it has against the Insured for premiums due the company in excess of the premiums returned to PR.
- (19) Agrees that a \$5.00 Administration Fee will be applied to any refund check that falls under the Abandoned Property Procedures if permitted by law.
- (20) Agrees to pay reasonable attorneys fees and/or collection agency fees and all other costs of collection if this contract is referred for collection to any collection agency and/or attorney not a salaried employee of PR if permitted by law.
- (21) Understands this Agreement is not required as a condition of the Insured obtaining insurance coverage.
- (22) Waives and releases PR from any claims, lawsuits and causes of action which may be related to any prior loans and/or to any act or failure to act prior to the time this Agreement becomes a binding contract, pursuant to paragraph 12ii. PR's liability for breach of any of the terms of this Agreement or the wrongful exercise of any of its powers shall be limited to the amount of principal balance outstanding, except in the event of gross negligence or willful misconduct. The laws of the State of Ohio will govern this Agreement and any claims against PR shall be litigated exclusively in the state or federal courts of South Carolina, for Florence County.
- (23) Represents that the Insured is not insolvent or presently the subject of any insolvency proceeding.
- (24) Agrees to pay to the insurance company the earned premium computed in accordance with the policy provisions which is in excess of the amount of premium advanced by PR which the insurance company retains if the insurance policy issued to the Insured is auditable or is a reporting form policy or is subject to retrospective rating.
- (25) Certifies that it is empowered to enter into this Agreement without any restrictions and that the individual signing it has been fully empowered to do so. To the extent that the Insured either possesses or claims sovereign immunity for any reason, such sovereign immunity is expressly waived and the Insured agrees to be subject to the jurisdiction of the laws and courts set forth in the preceding paragraphs.
- (26) Agrees that the money paid by PR is only for the premium as determined at the time the insurance policy is issued. PR's payment shall not be applied by the insurance company to pay for any additional premiums owed by the Insured resulting from any type of misclassification of the risk. The Insured shall pay to the insurer any additional premiums or any other sums that become due for any reason. If PR assigns the same account number to any additional extension or extensions of credit, (i) this Agreement and any other Agreement(s) identified by such account number shall be deemed to comprise a single and indivisible loan transaction, (ii) any default with respect to any component of such transaction shall be deemed a default with respect to all components of such transaction, and (iii) any unearned premiums relating to any component of such transaction may be collected and applied by PR to the totality of such transaction.

NOTICE: SEE PREVIOUS PAGE FOR IMPORTANT INFORMATION

EXHIBIT C

Proposed Interim Order

First Day Declaration; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and their creditors; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized to maintain the Insurance Programs without interruption, and to renew, supplement, modify, or extend (including through obtaining “tail” coverage) the Insurance Programs, or enter into new insurance policies, and to incur and pay policy premiums and broker fees arising thereunder or in connection therewith, in accordance with the same practices and procedures as were in effect prior to the Petition Date.
3. The Debtors are authorized, but not directed, in their discretion, to pay, honor or otherwise satisfy premiums, claims, deductibles, retrospective adjustments, administrative fees, broker fees (including, without limitation, the Broker Fees), and any other obligations that were due and payable or related to the period prior to the Petition Date on account of the Insurance Programs (including the Financed Insurance Programs) and the PFA, provided, however, that any payments for obligations that were due and payable or related to the period prior to the Petition Date on account of the Broker Fees shall not exceed \$100,000 in the aggregate.

4. The Debtors are authorized to (a) continue, in the ordinary course of business, the Financed Insurance Programs and the PFA, and renew or enter into new premium financing programs, as necessary, under substantially similar terms, and (b) pay the installment payments under the Financed Insurance Programs and the PFA and any such new premium financing programs as the same become due in the ordinary course of business.

5. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Order.

6. A final hearing on the relief sought in the Motion shall be conducted on _____, 2018 at _____ (ET) (the "**Final Hearing**"). Any party objecting to the relief sought at the Final Hearing or the Proposed Final Order shall file and serve a written objection, which objection shall be served upon proposed counsel for the Debtors, in each case so as to be received no later than _____, 2018 at 4:00 p.m. (ET). If no objections to the entry of the Proposed Final Order are timely filed, this Court may enter the Proposed Final Order without further notice or a hearing.

7. Nothing in this Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as

to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates, (c) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any of the Insurance Carriers or the Premium Financing Company, or (d) shall be construed as a promise to pay a claim.

8. Notwithstanding anything to the contrary in this Order, any payment made or to be made under this Order, and any authorization contained in this Order, shall be subject to the requirements imposed on the Debtors under any order(s) of this Court approving the Debtors' use of cash collateral and post-petition financing and any budget in connection therewith.

9. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

10. The requirements of Bankruptcy Rule 6003(b) are satisfied.

11. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

12. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: October ____, 2018
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT D

Proposed Final Order

First Day Declaration; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and their creditors; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized to maintain the Insurance Programs without interruption, and to renew, supplement, modify, or extend (including through obtaining “tail” coverage) the Insurance Programs, or enter into new insurance policies, and to incur and pay policy premiums and broker fees arising thereunder or in connection therewith, in accordance with the same practices and procedures as were in effect prior to the Petition Date.
3. The Debtors are authorized, but not directed, in their discretion, to pay, honor or otherwise satisfy premiums, claims, deductibles, retrospective adjustments, administrative fees, broker fees (including, without limitation, the Broker Fees), and any other obligations that were due and payable or related to the period prior to the Petition Date on account of the Insurance Programs (including the Financed Insurance Programs) and the PFA, provided, however, that any payments for obligations that were due and payable or related to the period prior to the Petition Date on account of the Broker Fees shall not exceed \$100,000 in the aggregate.

4. The Debtors are authorized to (a) continue, in the ordinary course of business, the Financed Insurance Programs and the PFA, and renew or enter into new premium financing programs, as necessary, under substantially similar terms, and (b) pay the installment payments under the Financed Insurance Programs and the PFA and any such new premium financing programs as the same become due in the ordinary course of business.

5. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Order.

6. Nothing in this Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates, (c) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any of the Insurance Carriers or the Premium Financing Company, or (d) shall be construed as a promise to pay a claim.

7. Notwithstanding anything to the contrary in this Order, any payment made or to be made under this Order, and any authorization contained in this Order, shall be subject to the requirements imposed on the Debtors under any order(s) of this Court approving the Debtors' use of cash collateral and post-petition financing and any budget in connection therewith.

8. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

9. The requirements of Bankruptcy Rule 6003(b) are satisfied.

10. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

11. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2018
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT 2

Interim Order

First Day Declaration; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and their creditors; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized to maintain the Insurance Programs without interruption, and to renew, supplement, modify, or extend (including through obtaining “tail” coverage) the Insurance Programs, or enter into new insurance policies, and to incur and pay policy premiums and broker fees arising thereunder or in connection therewith, in accordance with the same practices and procedures as were in effect prior to the Petition Date.
3. The Debtors are authorized, but not directed, in their discretion, to pay, honor or otherwise satisfy premiums, claims, deductibles, retrospective adjustments, administrative fees, broker fees (including, without limitation, the Broker Fees), and any other obligations that were due and payable or related to the period prior to the Petition Date on account of the Insurance Programs (including the Financed Insurance Programs) and the PFA, provided, however, that any payments for obligations that were due and payable or related to the period prior to the Petition Date on account of the Broker Fees shall not exceed \$100,000 in the aggregate.

4. The Debtors are authorized to (a) continue, in the ordinary course of business, the Financed Insurance Programs and the PFA, and renew or enter into new premium financing programs, as necessary, under substantially similar terms, or better terms, and (b) pay the installment payments under the Financed Insurance Programs and the PFA and any such new premium financing programs as the same become due in the ordinary course of business.

5. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Order.

6. A final hearing on the relief sought in the Motion shall be conducted on November 19, 2018 at 11:00 a.m. (ET) (the "**Final Hearing**"). Any party objecting to the relief sought at the Final Hearing or the Proposed Final Order shall file and serve a written objection, which objection shall be served upon proposed counsel for the Debtors, in each case so as to be received no later than November 9, 2018 at 4:00 p.m. (ET). If no objections to the entry of the Proposed Final Order are timely filed, this Court may enter the Proposed Final Order without further notice or a hearing.

7. Nothing in this Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as

to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates, (c) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any of the Insurance Carriers or the Premium Financing Company, or (d) shall be construed as a promise to pay a claim.

8. Notwithstanding anything to the contrary in this Order, any payment made or to be made under this Order, and any authorization contained in this Order, shall be subject to the requirements imposed on the Debtors under any order(s) of this Court approving the Debtors' use of cash collateral and post-petition financing and any budget in connection therewith.

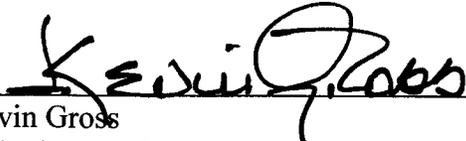
9. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

10. The requirements of Bankruptcy Rule 6003(b) are satisfied.

11. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

12. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: October 23, 2018
Wilmington, Delaware



Kevin Gross
United States Bankruptcy Judge

EXHIBIT 3

Final Order

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

In re:)	
	)	Chapter 11
)	
WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹	)	Case No. 18-12378 (KG)
)	
Debtors.	)	(Jointly Administered)
	)	Ref. Docket Nos. 7 and 35

**FINAL ORDER, PURSUANT TO SECTIONS 105(a), 363(b)
AND 364 OF THE BANKRUPTCY CODE, (I) AUTHORIZING (A) PAYMENT
OF PREPETITION OBLIGATIONS INCURRED IN THE ORDINARY
COURSE OF BUSINESS IN CONNECTION WITH INSURANCE
PROGRAMS, INCLUDING PAYMENT OF POLICY PREMIUMS AND
BROKER FEES, AND (B) CONTINUATION OF INSURANCE PREMIUM FINANCING
PROGRAMS; AND (II) AUTHORIZING BANKS TO HONOR AND PROCESS
CHECK AND ELECTRONIC TRANSFER REQUESTS RELATED THERETO**

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for the entry of interim and final orders, pursuant to sections 105(a), 363(b) and 364 of the Bankruptcy Code, (i) authorizing, but not directing, the Debtors to (a) continue and, to the extent necessary, renew the Insurance Programs and pay policy premiums and broker fees arising thereunder or in connection therewith, including prepetition obligations arising in the ordinary course of business, and (b) continue the Financed Insurance Programs and renew or enter into new premium financing programs, as necessary, under substantially similar terms, in the ordinary course of business, and (ii) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing; and upon consideration of the Motion and all pleadings related thereto, including 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 26933 Eckel Road, Perrysburg, OH 43551.

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

First Day Declaration; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that the relief requested in the Motion and provided for herein is in the best interest of the Debtors, their estates, and their creditors; and after due deliberation and sufficient cause appearing therefor, **IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized to maintain the Insurance Programs without interruption, and to renew, supplement, modify, or extend (including through obtaining “tail” coverage) the Insurance Programs, or enter into new insurance policies, and to incur and pay policy premiums and broker fees arising thereunder or in connection therewith, in accordance with the same practices and procedures as were in effect prior to the Petition Date.
3. The Debtors are authorized, but not directed, in their discretion, to pay, honor or otherwise satisfy premiums, claims, deductibles, retrospective adjustments, administrative fees, broker fees (including, without limitation, the Broker Fees), and any other obligations that were due and payable or related to the period prior to the Petition Date on account of the Insurance Programs (including the Financed Insurance Programs) and the PFA, provided, however, that any payments for obligations that were due and payable or related to the period prior to the Petition Date on account of the Broker Fees shall not exceed \$100,000 in the aggregate.

4. The Debtors are authorized to (a) continue, in the ordinary course of business, the Financed Insurance Programs and the PFA, and renew or enter into new premium financing programs, as necessary, under substantially similar terms, or better terms, and (b) pay the installment payments under the Financed Insurance Programs and the PFA and any such new premium financing programs as the same become due in the ordinary course of business.

5. The Banks are authorized, when requested by the Debtors, in the Debtors' discretion, to honor and process checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition obligations authorized to be paid hereunder, whether such checks or other requests were submitted prior to, or after, the Petition Date, provided that sufficient funds are available in the applicable bank accounts to make such payments. The Banks may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Order, and any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Order.

6. Nothing in this Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority, or amount of any claim against the Debtors and their estates, (c) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to any and all claims or causes of action against any of the Insurance Carriers or the Premium Financing Company, or (d) shall be construed as a promise to pay a claim.

7. Notwithstanding anything to the contrary in this Order, any payment made or to be made under this Order, and any authorization contained in this Order, shall be subject to the requirements imposed on the Debtors under any order(s) of this Court approving the Debtors' use of cash collateral and post-petition financing and any budget in connection therewith.

8. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

9. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

10. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2018
Wilmington, Delaware

Kevin Gross
United States Bankruptcy Judge