

**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 (KG)

Hearing Date: November 19, 2018 at 11:00 a.m. (ET)

Re: Docket Nos. 17, 44 and 129

RESERVATION OF RIGHTS REGARDING (A) DEBTORS' MOTION FOR AN ORDER ESTABLISHING PROCEDURES FOR SALES OF CERTAIN MISCELLANEOUS ASSETS OUTSIDE THE ORDINARY COURSE OF BUSINESS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE AND (B) MOTION OF THE DEBTORS FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION SECURED FINANCING, (II) AUTHORIZING THE USE OF CASH COLLATERAL, (III) GRANTING LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING THE AUTOMATIC STAY, AND (VI) SCHEDULING A FINAL HEARING

Caterpillar Financial Services Corporation (“CFSC”), by and through its undersigned counsel, hereby submits this reservation of rights (the “Reservation of Rights”) with respect to (A) *Debtors' Motion for an Order Establishing Procedures for Sales of Certain Miscellaneous Assets Outside the Ordinary Course of Business Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to Section 363 of the Bankruptcy Code* [Docket No. 129] (the “Sale Procedures Motion”); and (B) *Motion of the Debtors for Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Authorizing the Use of Cash Collateral, (III) Granting Liens and Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Scheduling a Final Hearing* [Docket No.

¹The 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.



17] (the “DIP Motion”).² In support of this Reservation of Rights, CFSC respectfully states as follows:

The DIP Motion

1. CFSC does not oppose the Debtors’ use of cash collateral and obtaining of postpetition secured financing provided that (i) the DIP Collateral (as defined in the DIP Motion) does not include the one hundred thirty five (135) pieces of equipment the Debtor Welded Construction, L.P. leases from CFSC (defined herein as the “Leased Equipment”) and the proceeds thereof and (ii) to the extent that the corresponding leases are subject to being recharacterized as secured financing arrangements, any liens, claims and encumbrances granted in connection with the Debtors’ use of cash collateral or postpetition secured financing do not prime the claims and interests of CFSC in the Leased Equipment.

2. CFSC raised its concerns informally with the Debtors. Subsequently, CFSC, the Debtors, and the DIP Lender agreed to language to be added to the final order approving the DIP Motion that adequately addresses CFSC’s concerns.

3. As set forth in the agenda for the November 19, 2018 hearing on, *inter alia*, the DIP Motion (the “Agenda”), the Debtors advised the Court that they are only seeking further interim approval of the DIP Motion, and are not seeking final approval until November 30, 2018.

4. On November 15, 2018, the Debtors filed the *Notice of Filing of Second Interim Order (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Authorizing the Use of Cash Collateral, (III) Granting Liens and Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, and (VI) Scheduling a Final Hearing* [Docket No. 228] (the “Proposed Second Interim DIP Order”).

² All capitalized terms not otherwise defined herein shall have the meaning set forth in the Sale Procedures Motion or the DIP Motion, as may be appropriate.

5. The Proposed Second Interim DIP Order contains the agreed upon language. CFSC has no objection to the Proposed Second Interim DIP Order.

6. While the Debtors have assured CFSC that the approved language will be added to the final order approving the DIP Motion, CFSC reserves its rights to raise its objections to the DIP Motion at or prior to the hearing to the extent that the final order does not include the language to which CFSC, the Debtors, and the DIP Lender agreed, or to the extent that additional language is added that negatively impairs CFSC's rights.

The Sale Procedures Motion

7. CFSC does not oppose the Debtors' establishment of procedures for the sale of their "Miscellaneous Assets." CFSC did, however, raise concerns it had with the Sale Procedures Motion informally with the Debtors. CFSC and the Debtors subsequently agreed to revisions to the form of order approving the Sale Procedures Motion that are acceptable to CFSC and address its concerns.

8. On November 15, 2018, the Debtors submitted a revised form of order for the Sale Procedures Motion. CFSC has no objection to the entry of this proposed revised form of order. However, in the *Notice of Revised Proposed Miscellaneous Asset Sales Procedures Order* [Docket No. 227] filed with the Court, the Debtors reserved their rights to modify the revised proposed order at or prior to the hearing on the Sale Procedures Motion. Moreover, in the Agenda, the Debtors noted that they continue to work toward a consensual resolution of the Sale Procedures Motion with PACCAR Financial Corp. and the Official Committee of Unsecured Creditors. Accordingly, to the extent that the Debtors do, in fact, revise the proposed form of order in a manner that is unacceptable to CFSC, CFSC reserves all of its respective rights to object to the Sale Procedures Motion at or before the hearing thereon.

Dated: November 15, 2018
Wilmington, Delaware

Respectfully submitted,

/s/ Stephen B. Gerald

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CERTIFICATE OF SERVICE

I, Stephen B. Gerald, do hereby certify that on November 15, 2018, I caused a copy of the foregoing **Reservation of Rights Regarding (A) Debtors' Motion for an Order Establishing Procedures for Sales of Certain Miscellaneous Assets Outside the Ordinary Course of Business Free and Clear of All Liens, Claims, Interests and Encumbrances Pursuant to Section 363 of the Bankruptcy Code and (B) Motion of the Debtors for Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Authorizing The Use of Cash Collateral, (III) Granting Liens And Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying The Automatic Stay, and (VI) Scheduling a Final Hearing** to be served on the parties listed on the attached in the manner indicated.

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