

**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)

Objection Deadline: June 18, 2020 @ 4:00 p.m.
(By agreement)
Hearing Date: June 24, 2020 @ 10:00 a.m.

Re: D.I. 1363

**OBJECTION OF SUNBELT EQUIPMENT MARKETING, INC., SUNBELT
TRACTOR & EQUIPMENT COMPANY, CROSS COUNTRY
INFRASTRUCTURE SERVICES, INC., AND OUTLAW PADDING
COMPANY, TO THE DEBTORS' AMENDED CHAPTER 11 PLAN**

Sunbelt Equipment Marketing, Inc. ("SEMI"), Sunbelt Tractor & Equipment Company ("STEC"), Cross Country Infrastructure Services, Inc., f/k/a Cross Country Pipeline Supply Co., Inc. ("Cross Country"), and Outlaw Padding Company ("Outlaw") (collectively, the "Objectors"), by and through their undersigned counsel, hereby submit this Objection to the Amended Chapter 11 Plan [D.I. 1363] (the "Plan") filed by Welded Construction, L.P. and Welded Construction Michigan, LLC (collectively, the "Debtors").

The Objectors are equipment lessors, each of which leased numerous pieces of machinery and equipment, pursuant to various lease agreements, to debtor, Welded Construction, L.P. (the "Debtor"), and provided related services. In the case of each of the Objectors, the leasing of equipment and the provision of related services continued post-petition for a period of time, until the equipment was returned or otherwise reclaimed. The Objectors are (i) holders of administrative

¹ The debtors in these Chapter 11 cases are Welded Construction, L.P. and Welded Construction Michigan, LLC (together, the "Debtors").



expense claims against the Debtor, for unpaid post-petition obligations of the Debtor to them under their respective lease agreements, and (ii) holders of general unsecured claims for prepetition invoices that were unpaid on the Petition Date and remained unpaid. The Objectors each timely filed proofs of claim for administrative expense claims and general unsecured claims.²

In addition, SEMI and STEC are also pursuing mechanics lien actions against Columbia Gas Transmission, LLC (“CGT”) the reputed owner of the real property interests in the projects in West Virginia for which SEMI and STEC provided their equipment services.³

Three of the Objectors returned ballots on the Plan in which they exercised the “Release Opt-Out” described in § 1.101 of the Plan, to opt out of the releases of non-debtors as set forth in Section 11.11(b) of this Plan; one of the Objectors did not return a ballot on the Plan. In any event, pursuant to § 11.11(d) of the Plan, each of the Objectors does hereby object to the non-debtor releases, as asserted below.

A chapter 11 plan must satisfy the requirements of 11 U.S.C. § 1129 to be confirmed. It is well established that the “proponent of the confirmation of a plan must prove by a preponderance

² The Objectors timely filed their general unsecured proofs of claim on or before the General Bar Date of February 28, 2019, and they filed their administrative expense proofs of claim on or before the Administrative Expense Bar Date of April 30, 2019. Their respective claim numbers, along with the amounts of the administrative expense claims, are shown immediately below. Although the administrative expense claims (the “Admin Claims”) as filed state higher figures than those shown in the chart immediately below, the Objectors have established with the Debtors that these are the amounts the Objectors are asserting as administrative expenses:

Claimant	Admin. Claim No.	Admin Claim Amount	Unsecured Claim No.
Cross Country	claim no. 795	\$ 211,499.38	claim no. 730
Outlaw	claim no. 777	\$ 63,320.30	claim no. 731
SEMI	claim no. 789	\$ 34,386.52	claim no. 733
STEC	claim no. 774	\$ 114,684.17	claim no. 732

³ Those mechanics lien actions were removed from state court to federal court and transferred to this District, and they are currently pending in this Bankruptcy Court. SEMI’s mechanics lien actions are docketed as Adv. Pro. No. 20-50445 (CSS) and Adv. Pro. No. 20-50447 (CSS); STEC’s mechanics lien actions are docketed as Adv. Pro. No. 20-50446 (CSS) and Adv. Pro. No. 20-50448 (CSS).

of the evidence that it satisfies the relevant requirements of 11 U.S.C. § 1129(a), and if the plan is not fully consensual, 11 U.S.C. § 1129(b).” *In re Breitburn Energy Partners LP*, 582 B.R. 321, 349 (Bankr. S.D.N.Y. 2018).

In several respects, the Plan fails to satisfy the requirements for plan confirmation. The Objectors submit that the Plan should not be confirmed in its present form unless its defects and deficiencies, as detailed below, are corrected.

OBJECTIONS

I. The Objectors Object to the Non-Debtor Releases in Section 11.11(b) of the Plan, and Hereby Opt Out of those Releases

1. The Plan’s Section 11.11(b) provides for overbroad general releases of a host of non-debtors who fall within the Plan’s definition of “Released Parties.”

2. The Objectors object to the releases provided for in § 11.11(b), as they impermissibly negate the rights or potential rights of nondebtors against other nondebtors

3. Pursuant to the Plan’s § 11.11(d), the Objectors hereby each are exempt from the releases provided for in § 11.11(b), by having filed this Objection thereto.

II. The Plan Improperly Proposes Differentially Advantageous Treatment for the Administrative Expenses of Professionals over Other Administrative Expenses

4. Professional fees are one type of administrative expense under the Bankruptcy Code. See 11 U.S.C. §§ 503, 507(a)(2). But all allowed administrative expenses are, under the Bankruptcy Code, entitled to be paid in full on the effective date of the Plan. 11 U.S.C. § 1129(a)(9)(A).

5. The Debtors’ Plan provides for differential treatment of the estates’ professional fees (which are one form of administrative expense) and other administrative expenses. *See* Plan, §§ 1.1 (definition of “Administrative Claim”), 1.2 (definition of “Administrative and Priority Claims Reserve”), 1.3 (definition of “Administrative and Priority Claims Estimate”), 1.95

(definition of “Professional Fee Claim”), 1.96 (definition of “Professional Fee Reserve”), 3.1.1 (treatment of Administrative Claims), 3.1.2 (treatment of “Professional Fee Claims”), and 11.2 (special treatment for “Professional Fee Claims”). In particular, the Plan calls for a reserve to be established and funded for the payment of professional fees which is separate and apart from a reserve for paying other administrative expenses. The reserve for payment of professional fees is defined in the Plan as a “reserve established and funded by the Debtors . . .” [Plan, § 1.96], while the reserve for other administrative expenses and priority claims is defined as a reserve of Cash funded by the Post-Effective Date Debtors . . .” [Plan, § 1.2]; meaning, implicitly, that the funding of the reserve for professional fee administrative expenses will precede the funding of the reserve for other administrative expenses. Neither the Plan nor the Debtors’ Disclosure Statement (D.I. 1364) provides a rationale and justification for the separately funded reserves.

6. Under the Plan, the reserve to pay the estates’ Professional Fees (together with the claims of Zolfo Cooper and Alix Partners) is to be fully funded, while the reserve for other administrative expenses may be less than what is owed. The reserve for professional fees is to be funded by the Estates in an amount that (a) “is agreed upon by the Debtors and the Committee” and that (b) “approximates, as of the Effective Date, the total projected amount of unpaid Professional Fee Claims and unpaid claims of Zolfo Cooper Management, LLC and AlixPartners, LLP” [Plan, § 11.2]. If there is a dispute about the reserve amount, the matter can be heard by the Bankruptcy Court. *Id.*

7. By contrast, the reserve of funds to pay other administrative expense claims is to be, *not* the total projected amount (as for professional fees), but instead simply an “estimated amount” of the unpaid claims in that category. Plan, §§ 1.2, 1.3. The control over the determination of the “estimated amount” of administrative and priority claims lies solely with the

Debtors, albeit in “consultation” with the Committee. Plan, § 1.3. The funds for this reserve are to be furnished by the Post-Effective Date Debtors [Plan, § 1.3], rather than the pre-Effective Date Estates. Since the Post-Effective Date Debtors will lack court oversight, or other oversight, in fixing the reserve for administrative expense claims, their incentives for assuring the adequacy of the reserve amount will be insubstantial.

8. Neither the Plan nor the Disclosure Statement offer any information on the projected amounts of professional fees or the projected amounts of other administrative expenses (or other priority claims). They provide no information regarding the Debtors’ “estimates” for those categories of claims, as compared with the amounts that are asserted by the claimants. Plainly, however, there is no assurance that the funds to be set aside to pay the administrative expense claims, other than those for professional fees, will be sufficient to pay those claims in full – or even close to full.

9. The administrative expense claims of subcontractors have all already been filed (in contrast to the professional fee claims), pursuant to the Administrative Claims Bar Date Order which set April 30, 2019 as the deadline. *See* D.I. 554. Consequently, the Debtors surely have a clear understanding as to amounts of these administrative expense claims, and the funding that will be needed to pay them in full.

10. In sum, although the Plan provides for full funding, by the Estates, of a reserve for Professional Fees, it does not provide for any funding by the pre-Effective Date Estates of a reserve to pay other administrative expenses. Furthermore, the reserve to pay other administrative expenses is to be funded only by the Post-Effective Date Debtors, based on an “estimated amount,” solely determined by the Debtors, of the administrative expense claims that will be “Allowed,” with no announcement of the amount, no assurance of its sufficiency, and no recourse to this Court

for assurance as to its sufficiency – apart from the Confirmation Hearing itself. Under these facts, the Plan does not comply with Section 1129(a)(9)(A) of the Bankruptcy Code, which requires chapter 11 plans to provide that on the effective date of a plan, holders of administrative expense claims will receive cash equal to the allowed amount of their claims. 11 U.S.C. § 1129(a)(9)(A).

III. The Plan’s Provisions on the Handling of Claims Objections Represent Unfair Treatment as to the Claims of SEMI and STEC, In that their Enforcement Would Compel SEMI and STEC Into Duplicative, Wasteful Litigation in This Court

11. Section 1129(a)(1) of the Bankruptcy Code provides that the plan must comply with the applicable provisions of the Code. Section 1129(a)(3) provides that the plan must be proposed in good faith.

12. To satisfy the standard, the Third Circuit has explained that a plan must “fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code.” *In re PWS Holding Corp.*, 228 F.3d 224, 242 (3d Cir. 2000).

13. Lower courts have explained that a debtor must satisfy certain requirements in order to meet its burden with respect to good faith. It must be established, *inter alia*, that “(1) [the plan] fosters a result consistent with the [Bankruptcy] Code’s objectives . . . , and (3) there was fundamental fairness in dealing with the creditors.” *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 609 (Bankr. D. Del. 2001); accord *In re Coram Healthcare Corp.*, 271 B.R. 228, 234 (Bankr. D. Del. 2001); *In re Washington Mutual, Inc.*, 461 B.R. 200, 239 (Bankr. D. Del. 2011).

14. The Plan contemplates that the Estates’ authority to object to any claims would be transferred to a Plan Administrator, and the Plan Administrator would initiate all claims objections. See Plan, § 5.5.3.

15. Earlier in this bankruptcy case, SEMI and STEC obtained relief from the automatic stay to initiate and pursue mechanics liens actions in state court in West Virginia against property

owner Columbia Gas Transmission, LLC (“CGT”), with debtor Welded Construction, L.P. included as a nominal defendant in the actions, consistent with the requirements of West Virginia law.

16. After SEMI and STEC filed their respective mechanics lien actions in state court in West Virginia, those actions were removed to federal court and transferred to this District, where they are currently pending in this Bankruptcy Court.

17. It is possible and perhaps probable that some portion of the claim amounts that SEMI and STEC have asserted against CGT in connection with equipment rentals intended for the Mountaineer Express Project (“MXP”) will be determined to be outside the scope of the mechanics’ lien, but will remain as claims against the Debtors. These amounts are already encompassed in STEC’s and SEMI’s filed claims against the Estate.

18. Since (a) the Debtors are already nominal defendants in these mechanics lien actions; and (b) these actions are already pending in this Court, *i.e.*, the same venue where all claims objections in the case are to be heard; and (c) a determination will necessarily be rendered in these actions as to the scope of SEMI’s and STEC’s mechanics’ liens, and consequently, as to the scope of what may not be liened, it would be wasteful of judicial resources, and unfairly wasteful of the resources of the litigants SEMI and STEC, to treat the outcome of such determinations in the adversary proceedings as entirely non-binding on the Debtors.

19. Yet, that is exactly what the Debtors are seeking through the Plan – to force SEMI and STEC into a second, separate proceeding with the Debtors, to the extent of any portion of their claims related to the MXP are not going to be satisfied by CGT – even though the Debtors are already participants in the pending adversary proceedings.

20. SEMI and STEC object to the Plan, to the extent it compels this unfair outcome.

IV. Plan Provisions Indicating that Allowed Administrative Expense Claims Will Be Paid on the Effective Date Are Illusory

21. As noted *supra*, one of the requirements for confirmation of a chapter 11 plan is that allowed administrative expenses must be paid in full on the effective date of the Plan. 11 U.S.C. § 1129(a)(9)(A).

22. The Debtors' Plan gives lip service to that requirement, in Section 3.1.1.

23. But the Plan sets no deadline whatsoever for the determination of whether any administrative expenses are to be treated as "Allowed." The Plan sets a nominal (*i.e.*, extendable) 180-day deadline for objections to general claims, in Sections 1.23 and 8.2. It provides a process for determination of any disputed Professional Fees, in § 11.2. But there is no process or deadline for the determination of administrative expense claims other than Professional Fees. Indeed, the Plan defines "Administrative Claim" as a type of "Claim." Plan, § 1.1. Consequently, the handling of Administrative Claims appears to be subject to Plan § 3.6, which provides in part:

The Post-Effective Date Debtors . . . (ii) may designate any Claim as a Disputed Claim and not Allowed at any time from and after the Effective Date until the Claim Objection Deadline.

Plan, § 3.6.

24. Indeed, the Debtors' failure to have addressed administrative expense claims such as those of the Objectors is inexplicable, given that their administrative expense claims were filed by the Administrative Expense Bar Date of April 30, 2019.

25. Under these circumstances, there is, unfortunately, no fact-based reason to expect that the Debtor will actually pay known and due administrative expense claims, other than Professional Fees, on the Effective Date of the Plan. This, the treatment described in §3.1.1 is illusory, rendering the Plan in violation of Bankruptcy Code §§ 1129(a)(1) and 1129(a)(9)(A).

V. To the Extent that the Plan Contemplates a Withholding of the Payment of Undisputed Administrative Expense Claims While General Claims of that Creditor Are Being Disputed, Such a Withholding Is Improper

26. The Plan provides that the Debtors will retain all transfer avoidance claims available under Chapter 5 of the Bankruptcy Code. *See* Plan, §§ 1.103, 5.5.7. A Plan Administrator would be appointed with authority to object to any claims; and there will be no distributions to holders of disputed claims until their claims are allowed. Specifically, § 8.3 of the Plan provides, in part:

[N]o payments or Distributions shall be made with respect to a Disputed Claim unless and until all objections to such Disputed Claim have been settled, withdrawn, or determined by a Final Order, and the Disputed Claim has become an Allowed Claim To the extent that a Claim is not a Disputed Claim but is held by a Holder that is or may be liable to the Debtors or the Post-Effective Date Debtors on account of a Retained Cause of Action, no payments or Distributions shall be made with respect to all or any portion of such Claim unless and until such Claim and liability have been settled or withdrawn or have been determined by Final Order of the Bankruptcy Court or such other court having jurisdiction over the matter.

Plan, § 8.3.

27. The Plan does not expressly state whether the Debtors intend to delay payment of an administrative expense claim of a creditor if an objection (including any avoidance action) were filed as to a general unsecured claim asserted by that creditor.

28. If that were the Debtors' intent, however, it would be improper. *See In re Lids Corp.*, 260 B.R. 680 (Bankr. D. Del. 2001) (administrative expense claims are not subject to §502(d), the provision of the Bankruptcy Code providing for disallowance of claim of any creditor that receives avoidable transfer and fails to surrender the same).

29. The Objectors object to the Plan on this ground, unless clarification is provided that payment of administrative expense claims will not be withheld in the event of objections to a creditor's general unsecured claims.

RESERVATION OF RIGHTS

30. The Objectors reserve their right to amend and supplement this Objection and make such other and further objections, as they deem necessary or appropriate.

31. The Objectors further reserve the right to join any objections filed by others that are not inconsistent with the objections raised herein.

WHEREFORE, for the foregoing reasons, the Objectors respectfully object to the Debtors' Plan, submit that the Plan cannot be confirmed in its present form, request that the Court deny its confirmation, and grant such other relief as it deems just and proper.

Dated: June 18, 2020

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In re:

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Debtors.

Chapter 11

Case No. 18-12378 (CSS)

(Jointly Administered)

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 2020, I caused a copy of the below-listed filing to be electronically filed with the Clerk of Court using CM/ECF which will electronically transmit notification of such filing to CM/ECF participants in the above referenced case in accordance with Del. Bankr. L. R. 9036-1. I further certify that I caused a copy of the listed filing to be served via electronic mail on the counsel on the attached service list.

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TRACTOR & EQUIPMENT COMPANY, CROSS COUNTRY
INFRASTRUCTURE SERVICES, INC., AND OUTLAW PADDING
COMPANY, TO THE DEBTORS' AMENDED CHAPTER 11 PLAN**

/s/ Douglas N. Candeub

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