

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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	:	Chapter 11
In re	:	
	:	Case No. 17-10751 (MEW)
WESTINGHOUSE ELECTRIC	:	
COMPANY LLC, et al.,	:	(Jointly Administered)
	:	
Debtors.¹	:	Re: Docket No. 2645, 2622
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RESERVATION OF RIGHTS OF CHICAGO BRIDGE & IRON COMPANY N.V. WITH RESPECT TO (A) NOTICE REGARDING (I) EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (II) PROPOSED CURE OBLIGATIONS, AND (III) RELATED PROCEDURES AND (B) MODIFIED FIRST AMENDED JOINT CHAPTER 11 PLAN

Chicago Bridge & Iron Company N.V. (“CB&I”) respectfully files this reservation of rights in response to the *Notice Regarding (I) Executory Contracts and Unexpired Leases, (II) Proposed Cure Obligations, and (III) Related Procedures* [D.I. 2645] (the “Notice”) and to the *Modified First Amended Joint Chapter 11 Plan of Reorganization* [D.I. 2622] (the “Plan”).

1. On October 27, 2015, CB&I and Westinghouse Electric Company LLC (“WEC”) entered into a Purchase Agreement (the “Purchase Agreement”) whereby WEC acquired Stone & Webster, Inc. from CB&I. CB&I’s claims under the Purchase Agreement are preserved in

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, if any, are: Westinghouse Electric Company LLC (0933), CE Nuclear Power International, Inc. (8833), Fauske and Associates LLC (8538), Field Services, LLC (2550), Nuclear Technology Solutions LLC (1921), PaR Nuclear Holding Co., Inc. (7944), PaR Nuclear, Inc. (6586), PCI Energy Services LLC (9100), Shaw Global Services, LLC (0436), Shaw Nuclear Services, Inc. (6250), Stone & Webster Asia Inc. (1348), Stone & Webster Construction Inc. (1673), Stone & Webster International Inc. (1586), Stone & Webster Services LLC (5448), Toshiba Nuclear Energy Holdings (UK) Limited (2348), TSB Nuclear Energy Services Inc. (2348), WEC Carolina Energy Solutions, Inc. (8735), WEC Carolina Energy Solutions, LLC (2002), WEC Engineering Services Inc. (6759), WEC Equipment & Machining Solutions, LLC (3135), WEC Specialty LLC (N/A), WEC Welding and Machining, LLC (8771), WECTEC Contractors Inc. (4168), WECTEC Global Project Services Inc. (8572), WECTEC LLC (6222), WECTEC Staffing Services LLC (4135), Westinghouse Energy Systems LLC (0328), Westinghouse Industry Products International Company LLC (3909), Westinghouse International Technology LLC (N/A), and Westinghouse Technology Licensing Company LLC (5961). The Debtors’ principal offices are located at 1000 Westinghouse Drive, Cranberry Township, Pennsylvania 16066.



proofs of claim filed in these cases. *See* Claim Nos. 3086, 3087, 3413, and 3414. CB&I and WEC are also parties to an ongoing dispute regarding the proper calculation of the final purchase price under the Purchase Agreement (the “Purchase Price Dispute”). The parties are continuing to seek resolution of the Purchase Price Dispute before an independent auditor in accordance with the 2017 decision of the Delaware Supreme Court in *Chicago Bridge & Iron Company N.V. v. Westinghouse Electric Company LLC*, 166 A.3d 912 (Del. 2017).

2. On February 23, 2018, the Debtors filed the Notice. The Notice provides that, as part of a proposed transaction with Brookfield WEC Holdings LLC (the “Plan Investor”), the Plan Investor may designate any of the Debtors’ executory contracts and unexpired leases for (i) assumption by the Debtors, (ii) assumption by the Debtors and assignment to Wind Down Co (as defined in the Plan) or (iii) rejection. The Purchase Agreement was originally listed on Exhibit A to the Notice, and Exhibit A stated that the cure amount for the Purchase Agreement would be \$0. *See* Notice [D.I. 2645] at Ex. A. But the Notice did not confirm whether the Debtors intend to assume, assign, or reject the Purchase Agreement.

3. To forestall the need for any objection to the Notice or the Plan, CB&I sought clarification from the Debtors regarding the intended treatment of the Purchase Agreement. In particular, CB&I sought confirmation as to whether the Debtors intend to reject, assume, or assume and assign the Purchase Agreement and which entity will own any rights under the Purchase Agreement going forward. In response, the Debtors indicated that they do *not* intend to assume the Purchase Agreement, and in the *Schedule of Assumed Contracts and Schedule of Assigned Contracts* [D.I. 2935], as filed on March 22, 2018, the Debtors removed the Purchase Agreement from the list of executory contracts to be assumed or assigned. Further, the Debtors have confirmed that the Reorganized Debtors (with Brookfield as the Plan Investor) will own

and control causes of action against CB&I under the Purchase Agreement and otherwise. Accordingly, CB&I now files this reservation of rights simply in order to confirm and protect its position, as follows:²

RESERVATION OF RIGHTS AND PROTECTIVE OBJECTION

4. As noted, the Debtors have confirmed that they do not intend to assume the Purchase Agreement. Accordingly, objections to the Notice and the Plan predicated on assumption of the Purchase Agreement are unnecessary. In light of the Debtors' non-assumption of the Purchase Agreement, CB&I's claims under the Purchase Agreement, including all claims resulting from the Debtors' past and future breach of the agreement, are preserved, as set forth in proofs of claim filed by CB&I.

5. The Debtors have further confirmed that the Reorganized Debtors will control the Purchase Price Dispute and any reserved Avoidance Actions,³ while Wind Down Co will control any objections to CB&I's claims. In light of this division, CB&I specifically reserves all rights of recoupment and setoff that it has under applicable law. The Plan on its face provides that "nothing contained in the Plan shall . . . be construed to prevent any entity from defending against claims objections or collection actions whether by asserting a right of setoff, recoupment, or otherwise, to the extent permitted by law." Plan § 11.9. The Debtors, accordingly, cannot assert that — by virtue of any assignment of claims or liabilities to Wind Down Co or otherwise — CB&I or any other creditor is deprived of setoff rights that presently exist. To the extent the Debtors are seeking to compromise or impair CB&I's rights of recoupment or setoff in any way, CB&I objects to the Plan, including under section 553 of the Bankruptcy Code.

² To facilitate consensual resolution of any objections to the Plan or the Notice, the Debtors extended the objection deadline for CB&I to March 23, 2018 at 10 a.m. ET.

³ See Plan § 11.2 ("Avoidance Actions"); see also *id.* § 1.84 (definition of "Material Claims").

6. Finally, to avoid any doubt on the issue, neither CB&I nor any of its affiliates consent to the third-party releases contemplated in Section 11.7 of the Plan. CB&I and various affiliates have filed proofs of claim in these cases.⁴ In light of the third-party releases, none of those entities voted on the Plan. Since each of those entities is “holder of a Claim . . . who (a) [was] entitled to vote on the Plan and did not vote on the Plan,” under Section 1.120 of the Plan, none of those entities (or any related person) is a “Releasing Part[y].” Thus, under the terms of the Plan, no CB&I entity has granted any release to any non-Debtor.⁵

Dated: New York, New York
March 23, 2018

Respectfully submitted,

WACHTELL, LIPTON, ROSEN & KATZ

/s/ Emil A. Kleinhaus

Richard G. Mason
Jonathan M. Moses
Emil A. Kleinhaus
Angela K. Herring
Cecilia A. Glass
51 West 52nd Street
New York, NY 10019-6150
Telephone: (212) 403-1332
Facsimile: (212) 403-2332

Attorneys for Chicago Bridge & Iron Company N.V.

⁴ The affiliates are CB&I Laurens Inc., CBI Services LLC, f/k/a CBI Services Inc., CB&I LLC, and The Shaw Group Inc.

⁵ By way of example, CB&I affiliate The Shaw Group Inc. asserted a claim against WECTEC LLC for its ongoing use of The Shaw Group Inc.’s property without making rental payments. *See* Claim No. 2782. The Shaw Group Inc. does not waive or release, and expressly preserves, the right to seek payment from any entity, including the Plan Investor, for post-Effective Date use of that property.