

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. 10 and 38

NOTICE OF FINAL HEARING AND ENTRY OF INTERIM ORDER, 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

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 Entry of Interim and Final Orders, Pursuant to Sections 105(a), 363(b), 507(a)(4) and**

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.



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 [Docket No. 10] (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 Delaware entered an order [Docket No. 38] (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)

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Proposed Counsel to the Debtors

EXHIBIT 1

Motion

**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 (___)
)	
Debtors.	)	(Joint Administration Requested)
)	

**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 above-captioned affiliated debtors and debtors in possession (collectively, the “**Debtors**”) hereby submit this motion (this “**Motion**”) for the entry of interim and final orders, substantially in the form attached hereto as Exhibit A (the “**Proposed Interim Order**”) and Exhibit B (the “**Proposed Final Order**,” and together with the Proposed Interim Order, the “**Proposed Orders**”), pursuant to sections 105(a), 363(b), 507(a)(4) and 507(a)(5) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), (a) authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to (i) pay prepetition employee wages, salaries and other accrued compensation, (ii) pay prepetition

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.

employee business expenses, (iii) make contributions to prepetition benefit programs and continue such programs in the ordinary course of their business, (iv) pay prepetition union dues and deductions and continue making payments to union benefit plans and the like, (v) honor workers' compensation obligations, (vi) make payments for which prepetition payroll deductions were made, (vii) pay processing costs and administrative expenses relating to the foregoing payments and contributions, and (viii) make payments to third parties incident to the foregoing payments and contributions, and (b) 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), 507(a)(4) and 507(a)(5) of the Bankruptcy Code.

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

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.

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. The Debtors’ Employees

4. As of October 17, 2018, the Debtors employed approximately 1,582 employees (collectively, the “**Employees**”). Of those Employees, approximately 1,486 are union members (collectively, the “**Union Employees**”). Approximately 92 of the Debtors’ Employees are salaried, with the remainder of the Employees accruing wages on an hourly basis. Currently, approximately 51 Employees (46 non-union Employees and 5 Union Employees) are located at the Debtors’ corporate headquarters in Ohio, and the remainder are at projects in Michigan, Pennsylvania, and West Virginia, with the vast majority of the Employees at projects in Pennsylvania.

5. Additionally, the Debtors have approximately twenty-five (25) independent contractors (the “**Independent Contractors**”). Such Independent Contractors are included in the definition of “Employees,” and any outstanding amounts owed to such

Independent Contractors are included in the definition of “Unpaid Wages,” for the purposes of this Motion and the Proposed Orders.³

6. The Employees, as with any business entity, perform a variety of critical functions for the Debtors, and their knowledge, skills and understanding of the Debtors’ infrastructure, business operations and customer and vendor relations is essential to, among other things, the success of these chapter 11 cases. Without the continued service and dedication of the Employees, it will be difficult, if not impossible, to operate the Debtors’ businesses without an unexpected or inopportune interruption, and to prosecute these chapter 11 cases in a manner that will maximize the value of the Debtors’ estates.

7. To successfully accomplish the foregoing, to minimize the personal hardship that the Employees will suffer if prepetition employee-related obligations are not paid when due or as otherwise expected, and to maintain employee morale and a focused workforce during this critical time, the Debtors believe that it is necessary and in the best interest of their estates and all stakeholders to seek the relief requested herein.

RELIEF REQUESTED

8. By this Motion, the Debtors request the Court to enter the Proposed Orders, authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to: (a) pay prepetition Employee wages, salaries, paid time off, and other compensation; (b) pay prepetition Employee business expenses; (c) make contributions to prepetition benefit programs provided to Employees, the most significant of which are described below, and continue such programs in the ordinary course of business with respect to the

³ In addition to the Independent Contractors, six (6) individuals employed by a non-debtor affiliate of one of the Debtors’ partners provide services to the Debtors, for which the Debtors reimburse that entity. No relief is sought herein or provided for in the Proposed Orders with respect to any prepetition amounts owed by the Debtors to such entity on account of these individuals’ services.

Employees; (d) pay prepetition union dues and deductions and continue making payments to union benefit plans and the like; (e) honor workers' compensation obligations; (f) make payments for which prepetition payroll deductions were made; (g) pay processing costs and administrative expenses relating to the foregoing payments and contributions; and (h) make payments to third parties incident to the foregoing payments and contributions (collectively, and as described in greater detail below, the "**Employee Wages and Benefits**").

9. The Debtors also request this Court to authorize the Banks to honor and process check and electronic transfer requests related to the Employee Wages and Benefits.

I. OBLIGATIONS ON ACCOUNT OF EMPLOYEE WAGES AND OTHER COMPENSATION, BUSINESS EXPENSES, DEDUCTIONS, AND PAYROLL TAXES

A. Unpaid Wages and Other Compensation

10. Historically, the Debtors' gross aggregate payroll liability is approximately \$6.75 million per week. However, at times, their gross aggregate payroll is subject to significant variation due to various factors such as weather, standby time, testing, and work schedules. Employees are generally paid wages and salaries on a weekly basis, via direct deposit, or in the form of a stored value "pay card" distributed to Employees with the corresponding pay loaded onto such card. No Employees are paid by check.

11. Payroll is made on Fridays, for the period ending the previous Sunday (i.e., payroll is typically one week in arrears) (the "**General Payroll**"), and the Debtors typical fund the General Payroll, through their third-party payroll processor, on Tuesday or Wednesday (i.e., two to three days beforehand).

12. In addition to the payroll made each Friday, the Debtors typically process an additional payroll on the following Monday (paid out to the Employees on Tuesday) for any corrections for the previous Friday's payroll (e.g., missed or incorrect hours) (the "**Corrections**

Payroll”). Also, for any layoffs that may occur during a given week, the Debtors process an additional payroll on Thursdays (paid out to the laid-off Employees on Friday) for current week pay for such laid-off Employees.

13. The Debtors most recent General Payroll (for the period ending October 14, 2018) was on October 19, 2018, in the amount of approximately \$5,700,000. The Debtors next General Payroll (for the period ending October 21, 2018) is on October 26, 2018, and prior to the commencement of these chapter 11 cases, the Debtors funded this payroll in the amount of approximately \$5,500,000.

14. Consistent with past practice, the Debtors anticipate that there will be a need for a Corrections Payroll for the period covered by the October 19th General Payroll to account for missed or incorrect hours. In addition, since the October 26th General Payroll was funded prepetition in an estimated amount based on historical payrolls, the Debtors anticipate that a Corrections Payroll for that period will be necessary, as well. As a result, although the Debtors’ initial payroll obligations through October 21, 2018 were paid or otherwise funded prior to the Petition Date, there will nevertheless be certain prepetition obligations outstanding to Employees (including to the Independent Contractors) on account of wages, salaries, overtime pay and other compensation.

15. Based on historical payroll figures, the Debtors believe that approximately \$450,000 in the aggregate remains outstanding, as of the Petition Date, on account of unpaid accrued wages, salaries, overtime pay and other compensation due from the Debtors to the Employees (collectively, the “**Unpaid Wages**”). Of this amount, approximately \$330,000 is on account of the Independent Contractors.

16. The Debtors' failure to remit full payment of the amount that the Debtors believe remains outstanding, as of the Petition Date, on account of Unpaid Wages would inflict great financial hardship on the Employees, and would damage morale and impair the Debtors' chapter 11 efforts. The Debtors, therefore, request authority from the Court to satisfy obligations owed to the Employees on account of Unpaid Wages.

17. Pending entry of the Proposed Final Order, no individual Employee will be paid more than \$12,850, in the aggregate, for any Unpaid Wages.

B. Payroll Processor

18. The Debtors retain Paylocity Corporation ("**Paylocity**"), a third party payroll processor, to administer its payroll. Paylocity's services are crucial to the smooth functioning of the Debtors' payroll process, and therefore to the Debtors' business operations generally. The Debtors pay Paylocity approximately \$30,000 per month in fees (the "**Payroll Processor Fees**") for its services. The specific amount owed to Paylocity varies based on the particular services that are provided by Paylocity when running a particular payroll. Paylocity is paid through the wire transfer that is made to Paylocity to fund the Debtors' payroll.

19. The Debtors estimate that, as of the Petition Date, at most, \$30,000 is due and owing to Paylocity, and seek to pay any such amounts in the ordinary course of business to ensure that the Debtors' payroll process continues to function in a timely and efficient manner and without interruption.

C. Employee Expenses

20. Prior to the Petition Date, and in the ordinary course of the Debtors' business, the Employees incurred various expenses on behalf of the Debtors in the scope of their employment, including, without limitation, expenses for meals, travel, car rentals, fuel and other business-related expenses (collectively, the "**Employee Expenses**"). All such expenses are

incurred with the applicable Employee's understanding that he or she will be reimbursed by the Debtors in accordance with the Debtors' reimbursement policy, as described in more detail below. In all cases, reimbursement is contingent on the Debtors' determination that the charges are for legitimate, reimbursable business expenses.

21. Some of the Debtors' employees initially incur the Employee Expenses using personal credit cards or funds and subsequently seek reimbursement from the Debtors. However, the majority of Employees incur the Employee Expenses through corporate credit cards issued by Huntington Bank (the "**Corporate Cards**"). Although the Debtors pay the invoice for the Corporate Cards, the cards are held in the names of individual Employees. Therefore, to the extent that the Debtors fail to remit payment to Huntington Bank for valid and legitimate charges, the Employees may be personally liable for the same. The Debtors have policies whereby the Employees seek reimbursement, or file expense reports for the Debtors' payment, of the Employee Expenses. These expenses are ordinary course expenses that the Employees incur in performing their job functions, including all of the Employee Expenses incurred on the Corporate Cards. It is essential to the continued operation of the Debtors' businesses that the Debtors be permitted to continue reimbursing, or making direct payments on behalf of Employees for the Employee Expenses.

22. It is difficult for the Debtors to determine the exact amount of Employee Expenses outstanding as of the Petition Date because, among other things, the Employees may have expenses that they have yet to submit for reimbursement. On average, over the past year, the Debtors have paid approximately \$250,000 per month on account of the Employee Expenses. The Debtors estimate that, as of the Petition Date, approximately \$200,000 in Employee Expenses remain unpaid, including those attributable to the Corporate Cards.

23. The Employee Expenses were all incurred on the Debtors' behalf and with the understanding that the Employees would be reimbursed for any and all such amounts. Therefore, to avoid harming the Employees who incurred the Employee Expenses, the Debtors seek authorization, but not direction, to continue reimbursing the Employees for the Employee Expenses in the ordinary course of business and in accordance with their prepetition practices and policies.

D. Wage Deductions, Trust Fund Taxes and Payroll Taxes

24. During each applicable pay period, the Debtors routinely deduct certain amounts from the Employees' pay, including, without limitation, (a) garnishments, child support and similar deductions, and (b) other pre-tax and after-tax deductions payable pursuant to certain of the Employee benefit plans discussed herein, such as the Employee's share of health care benefits, insurance premiums, 401(k) contributions, legally ordered deductions, and other miscellaneous deductions (collectively, the "**Wage Deductions**"), and forward those amounts to various third-party recipients. On average, the Debtors have historically deducted approximately \$275,000 in the aggregate in Wage Deductions from the Employees' pay per month. The Debtors believe that, as of the Petition Date, approximately \$120,000 has not been remitted to the various third-party recipients on account of the Wage Deductions.

25. Accordingly, the Debtors seek authority to continue to forward prepetition Wage Deductions to the applicable third-party recipients on a postpetition basis in the ordinary course of their business, as routinely done prior to the Petition Date.

26. Furthermore, the Debtors are required by law to withhold from the Employees' pay certain amounts related to, among other things, federal, state and local income taxes and social security and Medicare taxes (collectively, the "**Trust Fund Taxes**") for remittance to the appropriate federal, state or local taxing authorities. The Debtors must then

match from their own funds for social security and Medicare taxes and pay, based upon a percentage of gross payroll, additional amounts for state and federal unemployment insurance (the “**Payroll Taxes**”). In September 2018, the Debtors remitted approximately \$7.6 million in Trust Fund Taxes and \$1.9 million in Payroll Taxes. The Debtors remit Trust Fund Taxes and Payroll Taxes to Paylocity after each payroll, and Paylocity holds such amounts until they are paid to the appropriate authority. The Debtors believe that, as of the Petition Date, approximately \$50,000 is outstanding on account of the Trust Fund Taxes and the Payroll Taxes. The Debtors seek to remit and pay such amounts, in the ordinary course of business, for the reasons set forth herein.

27. By this Motion, the Debtors seek authority, but not the direction, from the Court to remit Wage Deductions, Trust Fund Taxes and Payroll Taxes in the ordinary course of business, including, without limitation, amounts determined to be related to the period prior to the Petition Date.

II. EMPLOYEE BENEFITS

28. The Debtors provide their eligible Employees, directly or indirectly, and in the ordinary course of business, with a number of employee benefits, including, but not limited to: (a) medical, dental, vision and prescription insurance; (b) paid sick and vacation days and other paid time off; (c) a 401(k) retirement savings plan; and (d) certain other miscellaneous employee benefits, including life insurance and disability benefits (collectively, the “**Employee Benefits**”).

A. Health Benefits

29. The Debtors sponsor several health and welfare benefit plans, including medical (including prescription coverage), dental, and vision, for certain of their Employees (collectively, the “**Health Benefits**”). The Debtors provide their Employees with a medical plan

administered by Aetna. In addition, the Debtors offer a dental plan, which is administered by Aetna, and a vision plan administered by VSP. The Union Employees receive health and welfare benefits in accordance with terms of the applicable union agreements.

30. Of the Debtors' non-union Employees, approximately eighty-six (86) receive one or more types of the Health Benefits. Some of these Employees make contributions (including to flexible spending accounts and the like) in connection with the Health Benefits, which are withheld from their wages every payroll cycle. The Debtors pay an aggregate amount of approximately \$200,000 per month on account of the Health Benefits pursuant to a variety of contracts with third-party insurance administrators and carriers, a portion of which is funded by Employee withholdings. Certain of these amounts are attributable to the administrative costs of third party insurance administrators.

31. As of the Petition Date, the Debtors estimate that approximately \$150,000 in the aggregate is currently due in connection with the Health Benefits, which figure includes premiums, estimated claims, and administrative costs.

32. By this Motion, the Debtors seek authority to: (a) continue to provide the Health Benefits to the Employees in the ordinary course of business; (b) continue making contributions to such benefit programs; (c) continue to pay amounts related thereto, including premiums, claim amounts, and administrative costs (including, without limitation, those of third party insurance administrators); and (d) pay such amounts to the extent that they remain unpaid on the Petition Date.

B. Paid Time Off

33. The Debtors provide sick and vacation time, as well time for personal reasons or religious observances, to all qualifying Employees as a paid time-off benefit (“**Paid**

Time Off”). Generally speaking, full-time, non-union Employees accrue Paid Time Off at a rate of 3.08 hours weekly based on the amount of hours. Paid Time Off may be carried over to the subsequent year, provided that Employees cease to accrue Paid Time Off once they reach a cap of 640 hours. Upon termination or retirement, the Employees generally are entitled to a cash payment for accrued and unused Paid Time Off; to the extent that an Employee resigns, the Employee is not entitled to any such cash payment. Union Employees are eligible for Paid Time in accordance with the terms of the applicable union agreement.

34. Subject to the Court’s entry of the Proposed Orders, the Debtors intend to comply with their policies related to Paid Time Off. The Debtors estimate that, as of the Petition Date, approximately \$465,000 in Paid Time Off for Employees is accrued but unpaid. Through this Motion, the Debtors request authority, but not direction, from the Court to continue to honor their Paid Time Off policies in the ordinary course of business, and to honor and pay, in their discretion, prepetition amounts related thereto. The Debtors will not pay prepetition obligations on account of Paid Time Off in excess of \$465,000 in the aggregate.

C. Additional Employee Benefits

i. 401(k) Plan

35. The Debtors offer a 401(k) plan for the benefit of their eligible Employees (the “**401(k) Plan**”). The program permits eligible Employees to defer a portion of their wages into the 401(k) Plan. The 401(k) Plan is also funded by matching contributions made by the Debtors. Employees are eligible for matching contributions after they have worked 1 year with the Debtors, and the matching contribution begins with the first payroll of their 13th month with the Debtors. The Debtors match 100% of the first 6% contributed by eligible Employees. Historically, on a weekly basis, the Debtors withhold from wages of participating Employees

contributions to the 401(k) Plan of approximately \$11,000, and incur matching liabilities of approximately \$16,000.

36. As of the Petition Date, the Debtors estimate that, at most, \$30,000 is owed by the Debtors on account of the 401(k) Plan. The Debtors seek authorization, but not direction, to continue to pay in the ordinary course of business amounts associated with the 401(k) Plan, including prepetition amounts determined to be owed and amounts owed to any 401(k) Plan fiduciaries.

ii. Life and AD&D Insurance and Disability Benefits

37. The Debtors provide basic life and accidental death and dismemberment insurance (“**Life and AD&D Insurance**”), as well as short-term and long-term disability (“**Disability Benefits**”), to all Employees through Reliance Standard Life Insurance Company. The Life and AD&D Insurance and the Disability Benefits cost the Debtors approximately \$8,000 in the aggregate per month in premiums and administrative expenses.

38. As of the Petition Date, the Debtors estimate that, inclusive of unpaid premiums and administrative costs, approximately \$33,000 in the aggregate is currently outstanding in connection with the Life and AD&D Insurance and the Disability Benefits.

iii. FSA Plan

39. In the ordinary course of business, the Debtors offer a flexible savings account plan (the “**FSA Plan**”). As of the Petition Date, the Debtors estimate that approximately \$45,000 is owed on account of withholding obligations, fees and other amounts in connection with the FSA Plan. The Debtors request authority to continue to pay all prepetition amounts due on account of the FSA Plan in the ordinary course of business during these chapter 11 cases.

III. UNION DUES, DEDUCTIONS, AND CONTRIBUTIONS

40. As noted above, the Debtors have approximately 1,486 Union Employees.⁴ The Debtors are a party to the National Pipeline Agreement, which is a labor contract negotiated and administered by the Pipe Line Contractors Association (the “**PLCA**”). The PLCA is a petroleum industry trade group that handles labor relations in the pipeline construction industry. The PLCA negotiates labor contracts with the trade unions representing the four crafts involved in pipeline construction: the International Brotherhood of Teamsters; the International Union of Operating Engineers; the Laborers International Union of North America; and the United Association of Plumbers & Pipefitters. The Union Employees are members of these trade unions.

41. Under the National Pipeline Agreement, the Debtors have agreed to deduct from the wages of the Union Employees, among other things, initiation fees, dues, 401(k) plan contributions, and certain legally ordered deductions, and are required to pay over such amounts to the applicable local union (collectively, the “**Union Deductions**”). The amount of unremitted Union Deductions owed as of the Petition Date is approximately \$75,000.

42. The Debtors believe that because unremitted Union Deductions are held for payment to a third-party (i.e., the unions), they are properly deemed to be held in trust and, therefore, such amounts do not constitute property of the Debtors’ estates. Out of an abundance of caution, however, the Debtors seek authority, but not the direction, from the Court to pay Union Deductions in the ordinary course of business, including, without limitation, amounts determined to be related to the period prior to the Petition Date.

⁴ Nothing in the Motion or the Proposed Order is intended or shall be deemed to impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates under section 1113 of the Bankruptcy Code.

43. In addition, the Debtors are required to make payments to certain union benefit plans, including, without limitation, union health and welfare funds, pension funds, apprentice training funds, annuity funds and other miscellaneous benefit plans (collectively, the “**Union Benefits**”). During each applicable pay period, the Debtors routinely accrue Union Benefits in certain amounts for the Union Employees’ based on local jurisdictions. The Debtors pay the amounts owed to various third-party recipients, and depending upon the particular union, the amounts are due on a weekly basis or between the 15th and 30th of each month for the prior month. On average, the Debtors have historically accrued approximately \$9.0 million in the aggregate in Union Benefits for the Union Employees’ per month. As of the Petition Date, the amount of the Union Benefits accrued but not yet due and owing is approximately \$10,000,000 in the aggregate.

44. Accordingly, the Debtors seek authority to continue to forward these prepetition Union Benefits to the applicable third-party recipients on a postpetition basis in the ordinary course of their business, as routinely done prior to the Petition Date.

IV. WORKERS’ COMPENSATION PROGRAM

45. Under applicable state law, the Debtors are required to maintain worker’s compensation insurance programs to provide their Employees with workers’ compensation insurance coverage for claims arising from or related to their employment with the Debtors (the “**Workers’ Compensation Program**”). To implement the Workers’ Compensation Program, with respect to Employees in Pennsylvania, West Virginia and Michigan, the Debtors maintain a workers’ compensation policy through Zurich Insurance (the “**Zurich Policy**”).⁵ The annual

⁵ The Debtors’ obligations under the Zurich Policy, as well as under two of the Debtors’ prior workers’ compensation policies, are backed by certain letters of credit in favor of the respective insurers.

cost of the Zurich Policy is approximately \$4.04 million, and it was most recently renewed on May 1, 2018.

46. With respect to their Ohio-based Employees, the Debtors participate in the State of Ohio's state-mandated workers' compensation program administered through the Ohio Bureau of Workers' Compensation (the "**Ohio BWC**"). The Debtors pay approximately \$818,131.63 in premiums on an annual basis to the Ohio BWC for coverage under this program. The Debtors make 6 payments throughout the policy period in equal installments. The most recent installment for the July 1, 2018 through July 1, 2019 reporting period was due on August 21, 2018, in the amount of \$136,300.63, and was paid by the Debtors before the Petition Date, and the next installment is due on October 22, 2018, in the amount of \$136,300.63.

47. To ensure that claims incurred under the Workers' Compensation Program are resolved, the Debtors must pay outstanding prepetition liabilities associated with the Workers' Compensation Program, as well as outstanding policy premiums and Workers' Compensation Fund obligations, as such amounts become due and owing. For the claims administration process in these chapter 11 cases to operate as efficiently as is possible, and to ensure that the Debtors comply with state law requirements, the Workers' Compensation Program must continue in the ordinary course of business.

48. Accordingly, the Debtors request authority, but not direction, in their discretion, to continue to maintain the Workers' Compensation Program in the ordinary course of business, and to pay prepetition amounts related thereto, including, without limitation, outstanding premiums and payments for workers' compensation claims, amounts owed to the Workers' Compensation Fund, deductibles, and fees owed for administrative costs and other

amounts required in connection with the program, as such amounts become due in the ordinary course of the Debtors' business.

BASIS FOR RELIEF

I. The Court Should Authorize, But Not Direct, the Debtors, In Their Discretion, To Pay or Otherwise Honor the Employee Wages and Benefits

49. The Debtors seek the relief requested herein because any delay in paying or otherwise honoring the Employee Wages and Benefits could severely disrupt the Debtors' relationship with the Employees and irreparably impair the Employees' morale at a time when their continued dedication, confidence and cooperation are most critical to the Debtors and the success of these chapter 11 cases. The Debtors face the risk that the success of these cases and their ability to operate their business without any unexpected or inopportune interruption may be severely jeopardized if the Debtors are not immediately granted authority to pay the Employee Wages and Benefits.

50. Employees are crucial to the operation of a company's business and they are crucial to the success of a chapter 11 case. The Debtors simply cannot risk the substantial disruption of their businesses and affairs that would, in all likelihood, accompany any decline in workforce morale attributable to the Debtors' failure to pay the Employee Wages and Benefits in the ordinary course of business. Absent the requested relief, the Employees would suffer great hardship and, in many instances, financial difficulties, since these monies are needed to enable them to meet their personal obligations. Additionally, without the requested relief, the Debtors' stability would be undermined by the potential threat that otherwise loyal Employees at all levels would seek other employment.

51. Pursuant to section 507(a)(4) of the Bankruptcy Code, each Employee may be granted a priority claim for:

allowed unsecured claims, but only to the extent of \$12,850 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for –

- (A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or
- (B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services, for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor...

11 U.S.C. § 507(a)(4).

52. Likewise, under section 507(a)(5) of the Bankruptcy Code, Employees may ultimately be granted a priority claim for:

allowed unsecured claims for contributions to an employee benefit plan –

- (A) arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only
- (B) for each such plan, to the extent of –
 - (i) the number of employees covered by each such plan multiplied by \$12,850; less
 - (ii) the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

Id. at § 507(a)(5).

53. The Debtors believe that the Unpaid Wages are entitled to priority status under section 507(a)(4) of the Bankruptcy Code, to the extent such wages do not exceed \$12,850 per Employee. The Debtors would therefore be required to pay these claims in full to confirm

any chapter 11 plan. See 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims for wages, salaries, and commissions, and certain allowed unsecured claims for contributions to an employee benefit plan). Thus, granting the relief requested herein would only affect the timing, and not the amount, of the payment of such amounts to the extent that they constitute priority claims.

54. Moreover, the vast majority of the Employees rely exclusively on their full compensation or reimbursement of their wages or expenses to continue to pay their daily living expenses, and these Employees will be exposed to significant financial difficulties if the Debtors are not permitted to pay Unpaid Wages. Additionally, the Debtors believe that if they are unable to honor such obligations, the morale and loyalty of the Employees will be jeopardized at a time when such support is critical to, among other things, their chapter 11 efforts and their ability to effectively prosecute these chapter 11 cases.

55. Additionally, the Wage Deductions, Union Deductions, Trust Fund Taxes, and Payroll Taxes principally represent portions of the Employees' pay that governments (in the case of the Trust Fund Taxes and Payroll Taxes), the Employees (in the case of the voluntary Wage Deductions and Union Deductions), and certain authorities (in the case of the involuntarily Wage Deductions and Union Deductions) have designated for deduction from the Employees' pay. The Debtors' failure to pay these amounts could result in hardship to certain Employees and an administrative burden for the Debtors. Indeed, the Debtors would expect inquiries from garnishors regarding any failure by the Debtors to submit, among other things, child support and alimony payments that are not the Debtors' property but, rather, have been withheld from the Employees' pay on such parties' behalf. Moreover, if the Debtors cannot remit these amounts, the Employees may face legal action due to the Debtors' failure to submit such payments.

56. The Employees are essential, among other things, to the orderly and successful prosecution of these chapter 11 cases and to avoid any unexpected or inopportune interruption of the Debtors' business operations. They have an intimate knowledge of the Debtors' infrastructure and operations, and any deterioration in the Employees' morale and welfare at this critical time undoubtedly would adversely impact the Debtors and the success of these cases.

57. Finally, maintaining the Workers' Compensation Program is justified because applicable state law mandates this coverage. Furthermore, with respect to any claims related to the Workers' Compensation Program, the risk that eligible claimants will not receive timely payments with respect to employment-related injuries could have a devastating effect on the financial well-being and morale of the Employees and their willingness to remain in the Debtors' employ. Entry of the Proposed Orders will alleviate any such concerns, as it will allow the Debtors to avoid any unexpected or inopportune interruptions to their business operations, and enable them to maximize the value of the estates for the benefit of all stakeholders.

58. For these reasons, the Debtors submit that the relief requested herein is necessary, prudent and in the best interests of the Debtors, their estates and creditors, and should therefore be granted.

II. The Court Should Authorize the Banks to Honor and Process the Debtors' Payments on Account of the Employee Wages and Benefits

59. 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(b)

60. 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 days of the Petition Date requires the Debtors to demonstrate that such relief "is necessary to avoid immediate and irreparable harm." The Debtors believe that, among other things, the success of their chapter 11 efforts will require the continued focus and dedication of the Employees, as any deterioration in employee morale or significant loss in workforce will have an adverse impact on the Debtors' ability, among other things, to continue to operate their business without any unexpected or inopportune interruption and to successfully prosecute these chapter 11 cases. Thus, if the relief requested herein is not granted, the failure to satisfy the Employee Wages and Benefits would cause the Debtors' estates immediate and irreparable harm by detracting from, and potentially derailing, the Debtors' chapter 11 efforts.

61. 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)

62. 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 delay in paying the Employee Wages and Benefits would be

detrimental to the Debtors, their estates and creditors. Indeed, the Debtors' ability to operate their business without any unexpected or inopportune interruption requires, in large part, an able and willing workforce, which the Debtors currently have in the Employees.

63. 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

64. 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, or (iii) shall be construed as a promise to pay a claim.

NOTICE

65. 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

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

CONCLUSION

WHEREFORE, the Debtors request 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

Proposed Interim 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 (___)
Debtors.	)	(Jointly Administered)
	)	Ref. Docket No. ___

INTERIM ORDER, 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

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), 507(a)(4) and 507(a)(5) of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to pay, honor or otherwise satisfy the Employee Wages and Benefits, including amounts and obligations related to the period prior to the Petition Date, and (b) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing; and upon

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.

consideration of the Motion and all pleadings related thereto, including the 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 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, in their discretion, to pay, honor or otherwise satisfy amounts and obligations on account of the Employee Wages and Benefits in the ordinary course of their business, including, without limitation, any amounts and obligations related to the period prior to the Petition Date; provided, however, that: (a) no payment to any Employee on account of Unpaid Wages shall exceed, in the aggregate, the \$12,850 statutory cap provided for under section 507(a)(4) of the Bankruptcy Code; (b) with respect to the Employee Wages and Benefits set forth in the table immediately below, the Debtors shall not pay any prepetition obligations on account of such Employee Wages and Benefits in excess of the amounts set forth therein; and (c) the Debtors shall not pay any prepetition obligations on account of Paid Time Off unless applicable state law requires such payment.

<u>Employee Wages and Benefits</u>	<u>Aggregate Amount</u>
Unpaid Wages	\$450,000
Payroll Processor Fees	\$30,000

Employee Expenses	\$200,000
Wage Deductions	\$120,000
Trust Fund Taxes and Payroll Taxes	\$50,000
Health Benefits	\$150,000
Paid Time Off	\$465,000
401(k) Plan	\$30,000
Life and AD&D Insurance and Disability Benefits	\$33,000
FSA Plan	\$45,000
Union Deductions	\$75,000
Union Benefits	\$10,000,000

3. Subject to Paragraph 2 of this Order, the Debtors are authorized, in their discretion, in the ordinary course of their business, to (a) continue to pay, honor or otherwise satisfy Unpaid Wages, Employee Expenses, and Paid Time Off, (b) withhold and remit to the applicable third-parties Wage Deductions, Trust Fund Taxes and Payroll Taxes, (c) continue to remit Union Deductions and pay, honor or otherwise satisfy Union Benefits, and (d) administer the Employee Benefits and the Workers' Compensation Program.

4. Nothing in this Order shall be deemed to authorize the payment of any amounts subject to section 503(c) of the Bankruptcy Code.

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 deadline by which objections to entry of the Proposed Final Order must be filed is _____, 2018 at 4:00 p.m. (ET). If no objections to 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, or (c) 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 B

Proposed 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 (___)
)	
Debtors.	)	(Jointly Administered)
	)	Ref. Docket Nos. ___ and ___

FINAL ORDER, 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

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), 507(a)(4) and 507(a)(5) of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to pay, honor or otherwise satisfy the Employee Wages and Benefits, including amounts and obligations related to the period prior to the Petition Date, and (b) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing; and upon

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.

consideration of the Motion and all pleadings related thereto, including the 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 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, in their discretion, to pay, honor or otherwise satisfy amounts and obligations on account of the Employee Wages and Benefits in the ordinary course of their business, including, without limitation, any amounts and obligations related to the period prior to the Petition Date; provided, however, that: (a) no payment to any Employee on account of Unpaid Wages shall exceed, in the aggregate, the \$12,850 statutory cap provided for under section 507(a)(4) of the Bankruptcy Code; and (b) with respect to the Employee Wages and Benefits set forth in the table immediately below, the Debtors shall not pay any prepetition obligations on account of such Employee Wages and Benefits in excess of the amounts set forth therein.

<u>Employee Wages and Benefits</u>	<u>Aggregate Amount</u>
Unpaid Wages	\$450,000
Payroll Processor Fees	\$30,000
Employee Expenses	\$200,000

Wage Deductions	\$120,000
Trust Fund Taxes and Payroll Taxes	\$50,000
Health Benefits	\$150,000
Paid Time Off	\$465,000
401(k) Plan	\$30,000
Life and AD&D Insurance and Disability Benefits	\$33,000
FSA Plan	\$45,000
Union Deductions	\$75,000
Union Benefits	\$10,000,000

3. Subject to Paragraph 2 of this Order, the Debtors are authorized, in their discretion, in the ordinary course of their business, to (a) continue to pay, honor or otherwise satisfy Unpaid Wages, Employee Expenses, and Paid Time Off, (b) withhold and remit to the applicable third-parties Wage Deductions, Trust Fund Taxes and Payroll Taxes, (c) continue to remit Union Deductions and pay, honor or otherwise satisfy Union Benefits, and (d) administer the Employee Benefits and the Workers' Compensation Program.

4. Nothing in this Order shall be deemed to authorize the payment of any amounts subject to section 503(c) of the Bankruptcy Code.

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, or (c) 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

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 No. 10	

INTERIM ORDER, 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

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), 507(a)(4) and 507(a)(5) of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to pay, honor or otherwise satisfy the Employee Wages and Benefits, including amounts and obligations related to the period prior to the Petition Date, and (b) authorizing the Banks to honor and process check and electronic transfer requests related to

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.

the foregoing; and upon consideration of the Motion and all pleadings related thereto, including the 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 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, in their discretion, to pay, honor or otherwise satisfy amounts and obligations on account of the Employee Wages and Benefits in the ordinary course of their business, including, without limitation, any amounts and obligations related to the period prior to the Petition Date; provided, however, that: (a) no payment to any Employee on account of Unpaid Wages shall exceed, in the aggregate, the \$12,850 statutory cap provided for under section 507(a)(4) of the Bankruptcy Code; (b) with respect to the Employee Wages and Benefits set forth in the table immediately below, the Debtors shall not pay any prepetition obligations on account of such Employee Wages and Benefits in excess of the amounts set forth therein; and (c) the Debtors shall not pay any prepetition obligations on account of Paid Time Off unless applicable state law requires such payment.

<u>Employee Wages and Benefits</u>	<u>Aggregate Amount</u>
Unpaid Wages	\$450,000
Payroll Processor Fees	\$30,000
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401(k) Plan	\$30,000
Life and AD&D Insurance and Disability Benefits	\$33,000
FSA Plan	\$45,000
Union Deductions	\$75,000
Union Benefits	\$10,000,000

3. Subject to Paragraph 2 of this Order, the Debtors are authorized, in their discretion, in the ordinary course of their business, to (a) continue to pay, honor or otherwise satisfy Unpaid Wages, Employee Expenses, and Paid Time Off, (b) withhold and remit to the applicable third-parties Wage Deductions, Trust Fund Taxes and Payroll Taxes, (c) continue to remit Union Deductions and pay, honor or otherwise satisfy Union Benefits, and (d) administer the Employee Benefits and the Workers' Compensation Program.

4. Nothing in this Order shall be deemed to authorize the payment of any amounts subject to section 503(c) of the Bankruptcy Code.

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 deadline by which objections to entry of the Proposed Final Order must be filed is November 9, 2018 at 4:00 p.m. (ET). If no objections to 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, or (c) 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.

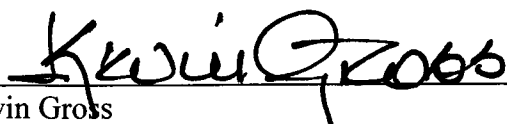
9. The Debtors are authorized to take any and all actions necessary to effectuate the relief granted herein.

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. 10 and 38

FINAL ORDER, 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

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), 507(a)(4) and 507(a)(5) of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors, in accordance with their stated policies and in their discretion, to pay, honor or otherwise satisfy the Employee Wages and Benefits, including amounts and obligations related to the period prior to the Petition Date, and (b) authorizing the Banks to honor and process check and electronic transfer requests related to the foregoing; and upon

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.

consideration of the Motion and all pleadings related thereto, including the 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 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, in their discretion, to pay, honor or otherwise satisfy amounts and obligations on account of the Employee Wages and Benefits in the ordinary course of their business, including, without limitation, any amounts and obligations related to the period prior to the Petition Date; provided, however, that: (a) no payment to any Employee on account of Unpaid Wages shall exceed, in the aggregate, the \$12,850 statutory cap provided for under section 507(a)(4) of the Bankruptcy Code; and (b) with respect to the Employee Wages and Benefits set forth in the table immediately below, the Debtors shall not pay any prepetition obligations on account of such Employee Wages and Benefits in excess of the amounts set forth therein.

<u>Employee Wages and Benefits</u>	<u>Aggregate Amount</u>
Unpaid Wages	\$700,000
Payroll Processor Fees	\$30,000
Employee Expenses	\$200,000

Wage Deductions	\$120,000
Trust Fund Taxes and Payroll Taxes	\$50,000
Health Benefits	\$150,000
Paid Time Off	\$465,000
401(k) Plan	\$30,000
Life and AD&D Insurance and Disability Benefits	\$33,000
FSA Plan	\$45,000
Union Deductions	\$75,000
Union Benefits	\$10,000,000

3. Subject to Paragraph 2 of this Order, the Debtors are authorized, in their discretion, in the ordinary course of their business, to (a) continue to pay, honor or otherwise satisfy Unpaid Wages, Employee Expenses, and Paid Time Off, (b) withhold and remit to the applicable third-parties Wage Deductions, Trust Fund Taxes and Payroll Taxes, (c) continue to remit Union Deductions and pay, honor or otherwise satisfy Union Benefits, and (d) administer the Employee Benefits and the Workers' Compensation Program.

4. Nothing in this Order shall be deemed to authorize the payment of any amounts subject to section 503(c) of the Bankruptcy Code.

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, or (c) 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