

**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)
)	
)	(Jointly Administered)
Debtors.)	
)	Ref. Docket Nos. 9, 37 and _____

FINAL ORDER, PURSUANT TO SECTIONS 105(a), 345, 363, 1107(a) AND 1108 OF THE BANKRUPTCY CODE, BANKRUPTCY RULE 2015, AND LOCAL RULE 2015-2, (I) AUTHORIZING AND APPROVING CONTINUED USE OF CASH MANAGEMENT SYSTEM, (II) AUTHORIZING USE OF PREPETITION BANK ACCOUNTS AND BUSINESS FORMS, (III) WAIVING THE REQUIREMENTS OF SECTION 345(b) ON AN INTERIM BASIS, (IV) GRANTING ADMINISTRATIVE EXPENSE STATUS TO POST-PETITION INTERCOMPANY CLAIMS, AND (V) GRANTING CERTAIN RELATED RELIEF

Upon consideration of the motion [Docket No. 9] (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for the entry of an order, pursuant to sections 105(a), 345, 363, 1107(a) and 1108 of the Bankruptcy Code, Bankruptcy Rule 2015 and Local Rule 2015-2, (i) authorizing and approving the Debtors’ continued use of their Cash Management System, (ii) granting the Debtors a waiver of the U.S. Trustee Guidelines, (iii) waiving the requirements of section 345(b) of the Bankruptcy Code with respect to the Debtors’ deposit practices on an interim basis, (iv) granting administrative expense status to post-petition intercompany claims, and (v) granting certain related relief; 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

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.



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 this Court having previously entered an order granting the relief requested in the Motion on an interim basis [Docket No. 37] (the “**Interim Order**”); 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: (i) designate, maintain, and continue to use, with the same account numbers, all of their bank accounts in existence on the Petition Date (collectively, the “**Bank Accounts**”), including, without limitation, those bank accounts identified in the Motion; (ii) use, in their present form, any and all checks and other documents related to the Bank Accounts; and (iii) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors-in-possession and to maintain and continue using these accounts in the same manner and with the same account numbers, styles, and document forms as used prior to the Petition Date.
3. The Columbia Gas Segregated Account shall be maintained and used solely for any funds received from Columbia Gas under the Columbia Gas Agreement. All funds in the Columbia Gas Segregated Account will be and shall remain, at all times, the exclusive property of Columbia Gas, and any funds in the Columbia Gas Segregated Account

shall be free from and shall not be encumbered by any liens or claims granted in connection with the Debtors' use of cash collateral and post-petition financing or any other liens or claims of any other party. Except with respect to the Leach Xpress Project Settlement Payment (as defined in the Columbia Gas Agreement), as such funds from the Columbia Gas Segregated Account are moved to the Huntington Bank Operating Account for disbursements, notwithstanding any comingling that may occur in the Huntington Bank Operating Account of such funds, until such disbursements are actually made those funds of Columbia Gas that were moved into the Huntington Bank Operating Account are and shall remain the separate property of Columbia Gas, and the Debtors shall only hold them in trust until disbursed.

4. In the event that the Debtors establish any other segregated accounts in connection with agreements with the Debtors' customers for the completion of the customers' projects, such additional segregated accounts (each, an "**Additional Customer Segregated Account**") shall be maintained and used solely for any funds received from such customers under the related agreements, and all funds in any Additional Customer Segregated Account will be and shall remain, at all times, the exclusive property of the related customer, and any funds in any Additional Customer Segregated Account shall be free from and shall not be encumbered by any liens or claims granted in connection with the Debtors' use of cash collateral and post-petition financing or any other liens or claims of any other party.

5. The Cash Management Banks participating in the Cash Management System are hereby authorized to continue to service and administer all of the Bank Accounts as accounts of the Debtors as debtors-in-possession without interruption and in the ordinary

course in a manner consistent with any agreements between the Cash Management Banks and the Debtors that existed prior to the Petition Date, and to receive, process, honor, and pay any and all checks, drafts, wires, or other electronic transfer requests issued, payable through, or drawn on, such Bank Accounts after the Petition Date by the holders or makers thereof or other parties entitled to issue instructions with respect thereto, as the case may be; provided, however, that any such checks, drafts, wires, or other electronic transfer requests issued by the Debtors before the Petition Date may be honored by any Cash Management Bank only if specifically authorized by order of this Court.

6. Except for those that comply with an order of this Court authorizing payment of certain prepetition claims, no checks, drafts, wires, or other electronic transfer requests drawn, issued, or requested on the Bank Accounts before the Petition Date but presented for payment after the Petition Date shall be honored or paid.

7. The Debtors may continue to operate the Cash Management System on and after the Petition Date in accordance with their normal and customary practice.

8. The Cash Management Banks participating in the Cash Management System shall not be liable to the Debtors or to their estates and shall not be deemed to be in violation of this Order for honoring a prepetition check or other item drawn on any account that is the subject of this Order: (a) at the direction of the Debtors; (b) in a good faith belief that this Court has authorized such prepetition check or item to be honored; or (c) as a result of an innocent mistake made despite implementation of reasonable item handling procedures.

9. The Debtors are authorized to continue to use all their correspondence and business forms (including, without limitation, checks, invoices, letterhead, stationary, and purchase orders) existing immediately before the Petition Date without reference to the

Debtors' status as debtors-in-possession; provided, however, that upon the depletion of any pre-printed check stock and other business forms, the Debtors will obtain new check stock and business forms reflecting their status as debtors-in-possession; provided further, however, that with respect to checks which the Debtors or their agents print themselves, the Debtors shall print "Debtor-in-Possession" or "DIP" and the case number for these chapter 11 cases on such items.

10. The Debtors are authorized to open any new bank accounts and close any of the Bank Accounts as the Debtors may deem necessary and appropriate; provided, however, that prior to opening any new bank accounts or closing any of the Bank Accounts, the Debtors shall provide notice of the Debtors' intentions with respect thereto, as soon as reasonably practicable, to (i) the U.S. Trustee, (ii) counsel to the Debtors' post-petition lenders, and (iii) counsel for any official committee appointed in these chapter 11 cases; provided further, however, that the Debtors shall only open any such new bank accounts at banks that have executed a Uniform Depository Agreement (a "UDA") with the U.S. Trustee, or at such banks that are willing to promptly execute such an agreement.

11. With regard to the Cash Management Banks that are not a party to a UDA with the U.S. Trustee, within thirty (30) days from the date of the entry of the Interim Order, the Debtors shall use their good-faith efforts to cause the bank to execute a UDA in a form prescribed by the U.S. Trustee. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned banks are unwilling to execute a UDA in a form prescribed by the U.S. Trustee are fully reserved.

12. The requirements of section 345(b) of the Bankruptcy Code are suspended on an interim basis for a period of thirty (30) days from the entry of the Interim

Order, such that the Debtors are hereby permitted to maintain their deposits in their Bank Accounts in accordance with their existing deposit practices. This Order shall be without prejudice to the Debtors' rights to seek further relief from this Court with respect to such requirements or to seek approval from this Court to deviate from such requirements on a final basis.

13. The requirements of section 345(b) of the Bankruptcy Code are waived to the extent necessary to allow the Debtors to keep open their account at MetaBank; provided that (1) if, at the end of any business day, the balance of the MetaBank account aggregates to more than \$250,000 (the "**Maximum Balance**"), the Debtors shall sweep all funds in excess of the Maximum Balance into one or more of the Debtors' accounts at a bank that is signatory to a UDA in a form prescribed by the U.S. Trustee, and (2) the Debtors shall attach to their monthly operating reports (the "**MORs**") copies of the bank statement or statements for their account at MetaBank for the time period covered by such MOR (together, the "**Non-UDA Bank Compliance Requirements**"). The Debtors shall be excused from the Non-UDA Bank Compliance Requirements should MetaBank become signatory to a UDA in a form prescribed by the U.S. Trustee. The Debtors shall also attach to their MORs copies of the bank statement or statements for the Columbia Gas Segregated Account and any Additional Customer Segregated Accounts for the time period covered by such MOR.

14. The Cash Management Banks are hereby authorized to debit from the Bank Accounts ordinary course of business bank fees and charges without further order of this Court, provided that such fees and charges are authorized under the applicable account agreement with the Debtors, and provided further that nothing set forth herein shall authorize

any of the Cash Management Banks to debit any claim or charges not in the ordinary course of business and not permitted under the applicable account agreements.

15. Within five (5) business days from the date of the entry of this Order, the Debtors shall serve a copy of this Order on each Cash Management Bank.

16. The Debtors are authorized on and after the Petition Date to engage in Intercompany Transfers in a manner consistent with their practices prior to the Petition Date; provided, however, that the Debtors may not make any intercompany transfers to non-Debtor affiliates or subsidiaries absent further order of this Court, provided, further, that nothing in this Order shall authorize the Debtors to repay the \$4 million claim asserted against Debtor Welded Construction L.P. by one of its general partners (or affiliates of one of its general partners) referenced in paragraph 29 of the First Day Declaration. Intercompany Claims are hereby granted administrative expense status pursuant to section 503(b)(1) of the Bankruptcy Code.

17. The Debtors shall, in the ordinary course of business, maintain accurate and detailed records of all transfers, including Intercompany Transfers, so that all transactions may be readily ascertained, traced, recorded properly, and distinguished between pre-petition and post-petition transactions.

18. Nothing in this Order (a) is intended or shall be deemed to constitute an assumption of any agreement pursuant to section 365 of the Bankruptcy Code or an admission as to the validity of any claim against the Debtors and their estates, (b) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their estates with respect to the validity, priority or amount of any claim against the Debtors and their estates, (c) shall impair, prejudice, waive or otherwise affect the rights of the Debtors and their

estates with respect to any and all claims or causes of action related to the Cash Management System or any of the Cash Management Banks, or (d) shall be construed as a promise to pay a claim.

19. Notwithstanding the Debtors' authorized use of a consolidated cash management system, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each particular Debtor, regardless of which Debtor remits payment for those disbursements.

20. 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.

21. The Debtors shall supply The Huntington National Bank ("**Huntington**") with a stop-payment order covering all prepetition checks (except checks for prepetition payments authorized by an order of this Court). Huntington shall not be subject to claim or liability if a prepetition check is inadvertently honored, and the Debtors shall indemnify and hold harmless Huntington from such claim or liability in accordance with the terms of the applicable account agreements. Nothing in this Order, or any other order entered in these chapter 11 cases, shall require Huntington to continue to maintain bank accounts of the Debtors or to otherwise engage in business with the Debtors postpetition. Nothing in this Order shall impair the security interest or setoff rights of Huntington, if any, against prepetition balances in any bank accounts, and all rights of the Debtors, their estates, Huntington and interested parties in these chapter 11 cases shall be reserved with respect

thereto. Nothing in this Order, or any other order entered in these chapter 11 cases, requires Huntington to honor any check or other instrument or item for which Huntington is not holding good and sufficient available funds.

22. The Debtors are authorized, but not directed, in their sole discretion, to collateralize their corporate credit cards issued by Huntington (the “**Corporate Cards**”) in an amount not to exceed \$250,000, to the extent that the Debtors determine, in their sole discretion, that such action is necessary to the continued use of the Corporate Cards or otherwise in the best interest of the Debtors’ estates, and to the extent that the Debtors collateralize the Corporate Cards pursuant to this Order, without the need for further notice to or action of this Court or any other party, the Debtors are authorized to open a new bank account at Huntington in connection therewith (the “**Corporate Card Collateral Account**”), *provided, however*, that the Debtors shall promptly provide the U.S. Trustee with the account number for any such account. Notwithstanding anything to the contrary in any order(s) of this Court approving the Debtors’ use of cash collateral and post-petition financing (any such order, a “**Financing Order**”), Huntington’s security interest and lien upon the Corporate Card Collateral Account (to the extent that such an account is established pursuant to this Order) shall be senior to any and all liens granted by this Court under a Financing Order until such time as the balance in the Corporate Card Collateral Account is remitted back to the Debtors and their estates.

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

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

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

A handwritten signature in black ink, appearing to read "Kevin Gross", written over a horizontal line.

KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE