

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

WELDED CONSTRUCTION, L.P., *et al.*,¹

Debtors.

Chapter 11
Case No. 18-12378 (CSS)
(Jointly Administered)

Objection Deadline: April 17, 2020 @ 4:00 p.m.
(by agreement of the parties)

Hearing Date: May 6, 2020 @ 1:00 p.m.

Re: D.I. 1249 and 1250

OBJECTION OF SUNBELT EQUIPMENT MARKETING, INC., SUNBELT TRACTOR & EQUIPMENT COMPANY, CROSS COUNTRY INFRASTRUCTURE SERVICES, INC., AND OUTLAW PADDING COMPANY, TO THE DEBTORS' DISCLOSURE STATEMENT IN SUPPORT OF THEIR CHAPTER 11 PLAN

Sunbelt Equipment Marketing, Inc. ("SEMI"), Sunbelt Tractor & Equipment Company ("STEC"), Cross Country Infrastructure Services, Inc., f/k/a Cross Country Pipeline Supply Co., Inc. ("Cross Country"), and Outlaw Padding Company ("Outlaw") (collectively, the "Objectors"), by and through their undersigned counsel, hereby submit this Objection to the Disclosure Statement [D.I. 1250] (the "Disclosure Statement") filed by Welded Construction, L.P. and Welded Construction Michigan, LLC (collectively, the "Debtors") in support of their Chapter 11 Plan [D.I. 1249] (the "Plan").

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

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



the equipment was returned or otherwise reclaimed. The Objectors are (i) holders of administrative expense claims against the Debtor, for unpaid post-petition obligations of the Debtor to them under their respective lease agreements, and (ii) holders of general unsecured claims for prepetition invoices that were unpaid on the Petition Date and remained unpaid.² In addition, SEMI and STEC are also pursuing mechanics lien actions against Columbia Gas Transmission, LLC (“CGT”) the reputed owner of the real property interests in the projects in West Virginia for which SEMI and STEC provided their equipment services.³

Under 11 U.S.C. § 1125(b), a chapter 11 debtor and plan proponent has an affirmative duty to provide creditors with a disclosure statement containing “adequate information” to “enable a creditor to make ‘an informed judgment’ about the Plan.” 11 U.S.C. § 1125(a)(1). The Third Circuit Court of Appeals has emphasized the importance of this obligation. *See Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988); *Krystal Cadillac-Oldsmobile GMC Truck, Inc. v. General Motors Corp.*, 337 F.3d 314, 321 (3d Cir. 2003). A debtor may only solicit votes to accept or reject a chapter 11 plan after the Court has approved the debtor’s written disclosure statement for that plan as containing “adequate information.” 11 U.S.C. §1125(b).

² The Objectors each timely filed proofs of claim for administrative expense claims and general unsecured claims. Their respective claim numbers are as follows:

Claimant	Admin. Claim No.	Unsecured Claim No.
Cross Country	claim no. 795	claim no. 730
Outlaw	claim no. 777	claim no. 731
SEMI	claim no. 789	claim no. 733
STEC	claim no. 774	claim no. 732

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

The Objectors submit that the Disclosure Statement fails to meet this standard, and they object to it on the following grounds.

OBJECTIONS

I. The Disclosure Statement Lacks Adequate Disclosure about the Proposed Differential Treatment between Administrative Expenses for Professionals Versus All Other Administrative Expenses.

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

2. The disclosure statement should identify, at least categorically, the types and amounts of the first priority administrative expenses to be paid under the Plan. *See generally In re Crowthers McCall Pattern, Inc.*, 120 B.R. 279, 291 (Bankr. S.D.N.Y. 1990).

3. The Debtors' Plan provides for differential treatment of the estates' professional fees (which are one form of administrative expense) and other administrative expenses. *See* Plan, §§ 1.2, 1.3, 1.93, 3.1.1, 3.1.2, and 11.2. *See also* Disclosure Statement, §§ IV.C.(12)(a) and (b). In particular, the Plan provides for separate reserves to be established and funded, for payment of professional fees and for payment of other administrative expenses. In fact, the reserve for payment of professional fees is defined in the Plan as a "reserve established and funded by the Debtors . . ." [Plan, § 1.93], while the reserve for other administrative expenses and priority claims is defined as a reserve of Cash funded by the Post-Effective Date Debtors . . ." [Plan, § 1.2], implying an earlier funding of the reserve for professional fee administrative expenses. The Disclosure Statement provides no rationale and justification for such disparate treatment.

4. The Disclosure Statement fails to make clear that, per the Plan, the reserve to pay the estates' professional fees is to be fully funded, but the reserve for other administrative expenses

may be less than what is owed. The reserve for professional fees is to be “the total projected amount of unpaid Professional Fee Claims and unpaid claims of Zolfo Cooper Management, LLC and AlixPartners, LLP” [Plan, § 11.2]. By contrast, the reserve for other administrative expenses – in a reserve for all other allowed administrative expenses (designated as “Unclassified Claims”) as well as other allowed priority claims and secured claims – is to be, not the total projected amount, but instead “the estimated amount” as determined by the Debtors in consultation with the Committee. Plan, § 1.3.

5. The Disclosure Statement offers no information on the projected amounts of professional fees or the projected amounts of other administrative expenses (or other priority claims and secured claims). It provides no information regarding the Debtors’ estimates for those categories of claims, and to what extent they may differ from the amounts asserted by the claimants. There is no information on what amount of funds will be available to pay the non-professional fee administrative expenses, or whether the funds that may be set aside to pay them will be sufficient to pay them in full. There is no information on the extent to which the expected administrative expenses can indeed be paid on the effective date of the Plan, and to what extent their payment will be postponed and delayed, as a result of claim objections.

6. In the case of subcontractor administrative expense claims, all the claims were already filed, pursuant to the Administrative Claims Bar Date Order which set April 30, 2019 as the deadline. *See* D.I. 554. Consequently, the Debtors should have, by now, a clear understanding as to amounts of these administrative expense claims, and the amount of funding that will be needed to pay them in full. If the Debtors are planning to set aside funds that are less than the total claimed amount as reserves, claimants are entitled to have that information disclosed, as well as the scope or extent of any planned under-funding.

7. Alternatively, if the administrative expense claims are being fully funded, then the Debtors should make that clear.

II. The Disclosure Statement Needs to Disclose the Expected Range of Recoveries for Impaired Classes of Claims.

8. The Disclosure Statement is inadequate in that it fails to disclose the expected recoveries or range of recoveries for the impaired classes of claims. *See* Disclosure Statement, § I.A.(5). Evidently, the Debtors intend to supply this information – the Disclosure Statement has asterisks where numerical percentages should be set forth.

9. The Court should not approve this Disclosure Statement with this critical information to be supplied later. Creditors should be given an adequate opportunity to review it, and to comment on its adequacy, before consideration is given to the Disclosure Statement overall.

10. In this regard, it is important that the Disclosure Statement include projected ranges for both the class of General Unsecured Claims and the class of “Surety Bond Claims.” Both classes are unsecured claims, so creditors will be entitled to know to what extent they are being treated differentially, and in turn, whether the treatment is fair.

III. The Disclosure Statement Lacks Necessary Information for Comparing Treatment under the Plan to Treatment if the Debtors Were Liquidated in a Chapter 7 Case.

11. A disclosure statement needs to provide a “liquidation analysis” comparing the likely recoveries by creditors under the Plan against the recoveries under a Chapter 7 liquidation of the Debtor's estate. *See In re U.S. Mineral Products Co.*, 2005 WL 5898300, at *8 (Bankr. D. Del. Nov. 29, 2005), *order confirmed*, 2005 WL 5887219 (Bankr. D. Del. Dec. 29, 2005). *See also In re Zenith Electronics Corp.*, 241 B.R. 92, 99 (D. Del. 1999); 11 U.S.C. § 1129(a)(7).

12. The Debtors are aware of this obligation. Their Disclosure Statement indicates that a liquidation analysis would be included as Exhibit C thereto. However, no liquidation analysis has yet been filed.

13. The Court should not approve this Disclosure Statement with a liquidation analysis to be supplied later. Creditors should be given an adequate opportunity to review it, and to comment on its adequacy, before consideration is given to the Disclosure Statement overall.

14. The liquidation analysis must be realistic. *See, e.g., In re Ditech Holding Corp.*, 606 B.R. 544, 608 (Bankr. S.D.N.Y. 2019) (debtors' liquidation analysis failed to account for value of consumer claims that would be retained pursuant section 363(o) in a chapter 7 scenario). It should disclose a reasonable estimate of the outcome if the Debtors in their current state (with the assets accumulated during the Chapter 11) were to be liquidated.

15. The liquidation analysis should include a clear, numbers-based analysis of the financial impact of the Plan Settlement. At present, the financial value to the estate and to creditors of the Plan Settlement with Bechtel and McCaig is very vague.

IV. The Disclosure Statement Should Clarify the Nature of the Intended Delay in Any Payments of Administrative Expense Claims to Subcontractors.

16. The Plan provides that the Debtors will retain all transfer avoidance claims available under Chapter 5 of the Bankruptcy Code. *See Plan*, §§ 1.100, 5.5.7. The Disclosure Statement explains that a Plan Administrator would be appointed, with authority to object to any claims; and that there will be no distributions to holders of disputed claims until their claims are allowed. Disclosure Statement, § IV.K.(3).

17. But the Disclosure Statement fails to address or explain whether the Debtors' intent is to delay payment of an administrative expense claim of a creditor if an objection (including any avoidance action) were filed as to an unsecured claim asserted by that creditor.

18. If that were the Debtors' intent, it would be improper. *See In re Lids Corp.*, 260 B.R. 680 (Bankr. D. Del. 2001) (administrative expense claims are not subject to §502(d), the

provision of the Bankruptcy Code providing for disallowance of claim of any creditor that receives avoidable transfer and fails to surrender the same).

V. Explanation Is Required For the Directive in the Disclosure Statement That Ballots by Electronic Transmission Are Not Allowed.

19. The Disclosure Statement states that, “absent prior consent of the Debtors, ballots sent by facsimile or electronic submission are not allowed and will not be counted.” Disclosure Statement, § I.B.(3).

20. No explanation for this arbitrary and backwards limitation is supplied in the Disclosure Statement. If there is some justification for it – especially at a time when court filings may *only* be submitted electronically – then the justification needs to be provided.

21. Further, if there is some justification for giving the Debtors the discretion to allow electronic submission of some ballots but not others, the basis for the exercise of that discretion should be furnished.

22. Otherwise, electronic submission of ballots should be allowed.

RESERVATION OF RIGHTS

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

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

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WHEREFORE, for the foregoing reasons, the Objectors respectfully object to the Disclosure Statement and request that the Court deny its approval in its present form.

Dated: April 17, 2020

MORRIS JAMES LLP

/s/ Stephen M. Miller _____

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April, 2020, I caused a copy of the below-listed filing to be electronically filed with the Clerk of Court using CM/ECF which will electronically transmit notification of such filing to CM/ECF participants in the above referenced case in accordance with Del. Bankr. L. R. 9036-1. I further certify that I caused a copy of the listed filing to be served via electronic mail on the counsel on the attached service list.

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