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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Chapter 11
	.	
WELDED CONSTRUCTION, L.P.,	.	Case No. 18-12378 (LSS)
<i>et al.</i> ,	.	
	.	(Jointly Administered)
Debtors.	.	
.	
WELDED CONSTRUCTION, L.P.,	.	
	.	
Plaintiff,	.	Adv. Pro. No. 19-50194 (LSS)
	.	
v.	.	
	.	
THE WILLIAMS COMPANIES,	.	
INC., WILLIAMS PARTNERS	.	
OPERATING LLC, AND	.	Courtroom No. 6
TRANSCONTINENTAL GAS PIPE	.	824 North Market Street
LINE COMPANY, LLC,	.	Wilmington, Delaware 19801
	.	
Defendants.	.	Wednesday, August 2, 2023
.	2:00 p.m.

TRANSCRIPT OF PRETRIAL HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors:	Kevin Guerke, Esquire
	Michael Neiburg, Esquire
	Sean Beach, Esquire
	Travis Buchanan, Esquire
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transcript produced by transcription service.
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1 (Proceedings commenced at 10:01 a.m.)

2 (Call to Order of the Court)

3 THE COURT: Please be seated. Thank you. We're
4 in the Welded v. Transco adversary, 19-50194.

5 Sorry about the courtroom change. Hopefully my IT
6 will be up by the time we get to trial and we will be able to
7 use my courtroom.

8 We're here on the pretrial. I did look at the
9 pretrial order. I'm going to ask does -- if counsel would
10 like to address me first with respect to the pretrial?

11 MR. GUERKE: Good morning, Your Honor. Kevin
12 Guerke from Young Conaway on behalf of Welded Construction.
13 I'm here today with my partners, Mike Neiburg and Travis
14 Buchanan.

15 As the Court mentioned, we jointly submitted a
16 pretrial order. I'm happy to answer questions that the Court
17 has. I have a list of questions or issues, preferences, that
18 the Court may have for how you'd like to conduct the trial.
19 I'm happy to proceed with those questions or answer questions
20 that you have.

21 THE COURT: Well, let me hear your questions
22 first.

23 MR. GUERKE: One item we already discussed, Your
24 Honor, was confidentiality. The issue that many of the
25 exhibits have been marked confidential or highly

1 confidential.

2 THE COURT: Looks like all of them now that I've
3 gone through the pretrial order.

4 MR. GUERKE: It's our position that
5 confidentiality or continuing to keep those exhibits
6 confidential is unnecessary for the trial. In the event that
7 a highly confidential document that's especially sensitive,
8 we want to keep it out of the public record. If we could
9 come up with a protocol to treat it as Chambers copy and
10 perhaps not have it survive the trial and be maintained on
11 the docket or something like that.

12 But short of that, we don't see issues with
13 confidentiality and it's our position that it's unnecessary
14 to seal the Courtroom, seal the record, other than what I've
15 just mentioned.

16 THE COURT: And under the -- I did see some
17 documents were marked highly confidential. Under the
18 protective order, what does that mean? How does that
19 distinguish from confidential?

20 MR. GUERKE: I don't have the confidentiality
21 order in front of me Your Honor, so I apologize for not
22 knowing the exact term. But it is especially sensitive
23 internal financial business information and it's
24 distinguished from confidential in that it restricts who has
25 access to it.

1 THE COURT: I was going to ask, was it attorney's
2 eyes only, or professional eyes only, or what was it? Do you
3 recall?

4 MR. NEIBURG: I think it was more professional
5 eyes only.

6 MR. GUERKE: It was professionals, consultants,
7 experts, those who are copied on the, you know, if it was an
8 email, an email exchange. There's a whole list, Your Honor.
9 And forgive me, I don't know it off the top of my head.

10 THE COURT: Okay. So, that's issue one.

11 MR. GUERKE: Issue two is just a question about
12 whether the Court normally times the trial presentations by
13 counsel. We would suggest if that's the case, the 50/50
14 split in time would be appropriate considering the claims and
15 counterclaims. So, we suggest time is tracked and that it be
16 split 50/50.

17 THE COURT: Okay. I have thought about that.
18 Haven't done it before, but had seriously thought about that
19 for this trial. Okay.

20 MR. GUERKE: The next is just trial presentation,
21 Your Honor. And from Welded's perspective, this is how we
22 see the case unfolding:

23 We have pretrial briefs to the Court next week.
24 We will have live opening statements at the beginning of
25 trial. We will have the trial evidence, then we will have

1 post-trial briefing. And if the Court would like it,
2 argument after post-trial briefing.

3 THE COURT: Is there a reason why I need opening
4 statements if there's going to be pretrial briefs or you all
5 could agree if we're going to time it, as I said I'm
6 seriously considering that, and you want to spend your time
7 on an opening, I guess that could be up to you.

8 MR. GUERKE: We were planning an opening, brief
9 opening, Your Honor, but we're interested in your views. Do
10 you want openings? Based on last week's hearing, you
11 understand a lot of the case and we don't want to be
12 repetitive. So, it's the Courts preference, but we're
13 prepared to give brief opening statements if that's what the
14 Court desires; otherwise, we can jump right into evidence.

15 THE COURT: Well, I think I'll leave it up to you
16 because I think leaning towards timing the case and you can
17 use your time anyway you want to. I do try to be prepared
18 coming in to understand the issues. I will tell you in my
19 day job as a bankruptcy judge and not as a litigator trial
20 judge here, I usually tell people to skip the opening because
21 I want to make sure we have time for all the evidence.

22 So, that's my usual concern. And I try to be
23 prepared so that I understand the context in which I'm
24 receiving evidence. But I will leave it up to you because if
25 you want to do a whole day, I guess, if we're timing, I don't

1 care. But I'll suggest to you that I will be prepared.

2 MR. GUERKE: Thank you, Your Honor.

3 Next on my list are questions about trial
4 witnesses. We have fact witnesses. We also have expert
5 witnesses. It's Welded's position that fact witnesses should
6 go on the stand once and not be restricted to direct on
7 cross; otherwise, we're asking witnesses to come back and
8 forth multiple times and we want to avoid that. So, our
9 suggestion is fact witnesses one time on direct and cross
10 without restrictions on scope of direct. And that's not
11 including experts. Experts would be handled differently.

12 THE COURT: Okay.

13 MR. GUERKE: Next on my list, Your Honor, is the
14 admission of evidence process. You will hear live testimony
15 and we will have exhibits and exhibits being introduced into
16 evidence through live witnesses. We also have -- each side
17 has designated, I don't know the exact count, fifteen, twelve
18 depositions. And there are multiple exhibits on both
19 parties' exhibit list that would be -- were extensively
20 discussed in those depositions and should be introduced, you
21 know, based on those depositions and not through a live trial
22 witness.

23 So, we have designated deposition transcript
24 pages, page and lines. We're going to submit a spreadsheet
25 to the Court. So, as far as the testimony itself, we were

1 planning to submit highlighted deposition transcripts that
2 indicate which side has designated what and where they join.

3 THE COURT: One set, right, with the counter
4 designations and different colors.

5 MR. GUERKE: Yes. We're working on one set, Your
6 Honor.

7 THE COURT: Okay.

8 MR. GUERKE: So, that would be how we introduce
9 the testimony. It's not so clear how we do the exhibits and
10 introducing the exhibits into evidence in this trial that
11 were used extensively in depositions. Our suggestion would
12 be to handle it -- if there are any objections, to handle it
13 in the post-trial briefing.

14 I should note, Your Honor, we are in the process
15 of updating our exhibit list to include the identification of
16 exhibits that were used in depositions. So, it will be
17 plaintiffs exhibit one and it will indicate it was used in
18 Joe Smith's deposition as Exhibit 6. So, Your Honor will be
19 able to trace where it would be used and I think that would
20 be more helpful.

21 So, it's our suggestion that we don't bog down the
22 trial. The evidence presented to you live with objections
23 over exhibits related to depositions.

24 THE COURT: Okay.

25 MR. GUERKE: Related to that, Your Honor, it's our

1 assumption that we don't have to. If we were using a
2 plaintiffs -- if something has been identified as a defense
3 exhibit or a plaintiffs exhibit, that it's free game for
4 either side to use. That we don't have to redesignate or add
5 it to an exhibit list.

6 THE COURT: I don't want duplicative exhibits.

7 MR. GUERKE: Demonstrative exhibits, Your Honor.
8 We've had a dialogue with defense counsel over the
9 demonstrative exhibits. Initially, Transco proposed
10 exchanging opening demonstratives on August 11th with
11 objections due August 16th, and then exchanging rebuttal
12 demonstratives, and that had an objection process to
13 demonstratives.

14 In response, we proposed providing demonstratives
15 24 hours before a witness takes the stand. I believe that
16 the defendants are -- or defendant is at two business days
17 prior. So, we have a difference; 24 hours before the witness
18 and two business days prior. It's our view that our proposal
19 provides notice. It provides flexibility to us for our trial
20 presentation. And it's also consistent with the practice of
21 this Court.

22 We also don't want to get bogged down with
23 objections and calling the Court over demonstratives. I
24 mean, the demonstratives are supposed to aid Your Honor and
25 make the trial more efficient and easier for a witness to

1 take the stand. We don't want a sideshow process of
2 objections and -- I've never heard of an objection to the
3 demonstrative.

4 THE COURT: I had a real interesting discussion of
5 demonstratives during my Boy Scouts trial. Are you
6 anticipating anybody's going to try to move the demonstrative
7 exhibits into evidence?

8 MR. GUERKE: I don't think so, Your Honor. It'd
9 be an aid to the Court. It would be to facilitate the
10 witness's presentation just like happens every day in this
11 court.

12 THE COURT: Okay. I'll hear from Ms. Ewald on
13 that. But I'm pretty sure I ruled in Boy Scouts that I was
14 not taking them into evidence which was a request.

15 MR. GUERKE: I think the last item on my list,
16 Your Honor, is -- it's been flagged in the pretrial order
17 which is the amendment of pleadings. Back in the fall of
18 2020, we informed Transco that we were withdrawing damages
19 claim for consequential damages as described in our pretrial
20 order. We had a couple conversations about that. It's been
21 mentioned in court, I think, in the briefing. We provided
22 them with a stipulation stipulating that we're amending and
23 withdrawing those type of damage claims.

24 So, to the extent it hasn't been withdrawn, we
25 would like to withdraw those type of damages claims. That

1 the stipulation is reflected, the language of the
2 stipulation, is reflected in the order, the pretrial order,
3 Your Honor. And I don't know if we have to go through a
4 formal process. But in our mind, it's been withdrawn for two
5 years. And Transco has a different view.

6 THE COURT: Okay.

7 MR. GUERKE: Unless the Court has any questions, I
8 think that runs through my list, Your Honor.

9 THE COURT: Okay. Well, I'm going to let Ms.
10 Ewald run through that list and add anything she wants to.
11 But we'll go through this and then I may have a few things,
12 I'll check my list, that weren't on here.

13 MR. GUERKE: Thank you, Your Honor.

14 THE COURT: Thank you.

15 MS. EWALD: Good morning, Your Honor. May I
16 please the Court, my name is Shelley Ewald and I represent
17 the defendant, Transcontinental Gas Pipe Line Company.

18 And in regard to Mr. Guerke's issues raised for
19 the pretrial conference, I have responses as well as some
20 additional items. I can provide the Court with a view of the
21 instances in which we are in agreement, which I think are
22 many.

23 THE COURT: Okay.

24 MS. EWALD: We appreciate the Court's comments
25 regarding opening statements and the timing situation. We

1 agree with the use of a 50/50 split of time between the
2 parties for presentation on evidence. And I appreciate that
3 the Court has advised that can be used by the parties as they
4 see fit with the understanding that opening statements should
5 be kept brief or are not, you know, are not overly interested
6 in them.

7 With regard to the deposition testimony, the
8 transcripts that Mr. Guerke mentioned, I believe there are 21
9 or 22 designated deposition transcripts. There's been
10 testimony that has been designated both as opening, as
11 counter designations, as well as some overlapping
12 designations. There are objections to certain of the
13 designations and counter designations by both parties.

14 So, I would say with regard to the introduction of
15 documents, through the deposition transcripts, that that is a
16 step that will have to be addressed in the event that there
17 is an objection with regard to the testimony that is being
18 laid out to introduce that exhibit. So, I don't think simply
19 -- and I don't believe Mr. Guerke was suggesting this, but I
20 don't think simply using them as a deposition exhibit
21 ultimately renders them admissible if the testimony is
22 introduced.

23 THE COURT: I don't think that was his suggestion.

24 MS. EWALD: I understand, Your Honor.

25 And one of the questions I had with regard to the

1 introduction of that deposition testimony, I appreciate that
2 the Court may not be interested in having someone sit on the
3 stand and read the entirety of those designations and address
4 each of them. There may be a few key designations that might
5 be helpful to the Court to hear along with the flow of the
6 other evidence. And we would in that situation request leave
7 from the Court to present it, that testimony from the
8 deposition, in the case by reading it into the record
9 potentially.

10 THE COURT: I'm okay with that. You can read it
11 in. You can do the video. You can do whatever. It's part
12 of your case. And if there's certain specific testimony
13 that's fine.

14 MS. EWALD: Thank you, Your Honor. With regard to
15 the demonstrative exhibit --

16 THE COURT: Before we move off depositions, one
17 thing I noted was that there seemed to be deposition
18 designations for people who are also going to be called live.
19 Is there a reason for that?

20 MS. EWALD: Your Honor, under Rule 32(a), the
21 testimony of a corporate representative speaking on behalf of
22 the entity, their testimony, sworn testimony, can be
23 introduced into evidence even though they are appearing as a
24 live witness. I learned this the hard way, Your Honor, that
25 little wrinkle in Rule 32(a), I believe, which would allow

1 the admission of a corporate representative to be introduced
2 for any purpose even if that witness is appearing at the
3 trial.

4 I would say one of the issues I anticipate with
5 regard to the corporate representative deposition testimony
6 is that there are several objections that the particular
7 subject matter was not allocated to that witness from the
8 30(b)(6) corporate representative notice. So, that
9 complicates that a bit. But I think if it were an
10 appropriate corporate representative deposition question and
11 answer, then under Rule 32(a) it would be admissible.

12 THE COURT: I think that's probabaly right. And I
13 remember using Rule 32(a) as a practitioner. But I think I
14 used it in context to swear. I didn't have to witness on the
15 stand. So, that's the question I have. That seems like a
16 duplication. I'll think about it, but it seems like a
17 duplication. Why can't you just ask the same question from
18 the witness on the stand? If he gives you a different answer
19 then you have some other issue.

20 MS. EWALD: Your Honor, I would submit that the
21 prohibition on either cumulative or duplicative evidence
22 would still apply in that situation.

23 THE COURT: Okay. I'll throw it out there. If
24 Welded has a thought on that, I'll hear from them. I'll hear
25 about that. Okay.

1 MS. EWALD: With regard to the demonstrative
2 evidence, I'm in agreement with regard to the admissibility
3 or lack of admissibility of demonstrative evidence. It is
4 not typically admissible evidence.

5 It's there, as Mr. Guerke mentioned, to aid the
6 fact finder in understanding the witness's testimony. The
7 only, what might be perceived as an exception to that, would
8 be Rule 1006, summaries of extensive information. Summaries
9 of data that have been compiled, in this case, by experts.
10 The experts have compiled data into tables that are
11 separately identified in maybe Rule 1006 summary; otherwise,
12 the demonstrative evidence is there provided for the Court to
13 assist in understanding the witness's testimony.

14 With regard to the exchange and the timing of
15 exchange of demonstrative evidence, I hope we can work that
16 out. I have certainly had, perhaps more jury trials
17 certainly then bench trials, had objections to demonstrative
18 evidence that I was surprised by. But I'm --

19 THE COURT: I'm not anticipating that that will be
20 the case. I mean, if there's something so outrageous on a
21 demonstrative, I guess I'll consider it. But I wouldn't
22 expect to receive objections to demonstrative exhibits.

23 MS. EWALD: Thank you, Your Honor.

24 With regard to the confidentiality and the highly
25 confidential exhibits, as Mr. Guerke mentioned and as the

1 Court has ruled, we agree that there's no reason to close the
2 Courtroom for the purpose of protecting any highly
3 confidential information. I don't believe typically exhibits
4 are entered into the public record, or pacer, or typically
5 available to the public. But I also think that we could
6 probably work out any situation if highly confidential
7 exhibits make it into the record.

8 THE COURT: Okay. We don't put the exhibits on
9 the docket. So, that will not be an issue. But I would
10 really like the number of confidential or highly confidential
11 exhibits limited so that I don't have to be concerned about
12 referencing them if I'm going to do that in an opinion.

13 From the debtors' perspective, I assume, probably
14 nothing is confidential at this point because they don't
15 exist anymore. The debtor doesn't exist anymore. I can
16 understand a concern, perhaps, from Transco but I'm also
17 thinking this contract from what I'm hearing is pretty sui
18 generis. So, I don't know if it's really a concern. But
19 I'll hear that if it's an issue -- remains an issue.

20 MS. EWALD: With regard to the witnesses, Your
21 Honor, one of the items I wanted to address was the Court was
22 the sequestration of witnesses. And I would propose that
23 fact witnesses be sequestered, that a rule of sequestration
24 would not apply to either the corporate representative, if
25 the corporate representative is acting as a fact witness for

1 the party, and it would not apply to any of the experts.

2 THE COURT: Okay.

3 MS. EWALD: And I believe, Your Honor, that those
4 are the -- I believe those are the issues on my list that
5 were slightly different.

6 One of the questions I did have for the Court it
7 made before IT or technology people; we may have a short
8 animation. It would not have audio. It would be narrated by
9 a witness. It would be a demonstrative intended to aid the
10 Court in simply understanding the construction sequence of a
11 pipeline construction. It is very short. And I believe it
12 would be easily played on trial director. But that would be
13 one item that we may have to arrange with technology.

14 THE COURT: Yes. That's fine. And assuming the
15 technology in my Courtroom is working, that's fine. Just
16 call over ahead of time and coordinate with our IT people and
17 they'll make sure you have the access that you need.

18 MS. EWALD: And with regard to the additional IT
19 issue, many of the exhibits from both parties have Excel
20 spreadsheets attached. To the extent we were able to do it,
21 we have converted them into a printed document. There are
22 some that are simply impossible to treat in that fashion.

23 THE COURT: Yeah, no, if you have Excel, give me a
24 thumb drive with the Excel on it, or a disc, or something
25 that I can use.

1 MS. EWALD: And finally with regard to the issue
2 of the damages claim, if the Court would like me to address
3 that issue.

4 THE COURT: Yes.

5 MS. EWALD: With regard to the issue of withdrawal
6 of certain claims that Welded launched in its complaint,
7 there has been no formal withdrawal of those claims. And
8 during depositions, I think there'll be evidence that -- let
9 me step back. I believe the reason for withdrawal of those
10 claims is to go along with Welded's motion to exclude
11 evidence regarding the use of the ASR funds for other
12 purposes and the contentions that Transco was the reason that
13 Welded was forced to file bankruptcy protection in October of
14 2018.

15 And we submit that the evidence will show, as well
16 as deposition testimony, that that was not the case and that,
17 in fact, the Welded ASR advance payments were being used to
18 fund other loses on other projects and were keeping Welded
19 afloat until the time where, inevitably, they were projecting
20 that they would file for bankruptcy protection. So, I think
21 the withdrawal of these claims -- and some of the witnesses
22 for Welded also testified that this was the reason that
23 bankruptcy was -- the protection was sought was because of
24 the Transco withholding of funds in October of 2018.

25 So, we submit it's relevant. I don't know if the

1 withdrawal of these damages is intended to make these issues
2 irrelevant. I submit that that is not the case. And that
3 there has been no formal pleading, ultimately, filed with
4 regard to these claims.

5 THE COURT: Well, what's the relevance of that
6 evidence if it doesn't go to the consequential damages that
7 are being withdrawn?

8 MS. EWALD: The relevance of the evidence is that
9 it goes to the cash advances that Welded was seeking, whether
10 they were being submitted in good faith to actually cover
11 upcoming costs on the ASR project versus covering debt for on
12 another projects. It goes to the issue of whether Welded
13 breached the ASR contract under Article 24 to promptly pay
14 subcontractors. That would go to whether they had performed
15 their obligations and go toward their claims with respect to
16 CASPA which we submit is not applicable here. But their
17 breach of contract would prevent them from recovery under
18 CASPA in our view.

19 To the extent witnesses have testified that it was
20 the ASR withholding that plunged Welded into bankruptcy, this
21 evidence is relevant to demonstrate that that was not the
22 case. And to draw into question, both the good faith nature
23 of the advance payment sought and how these funds were
24 ultimately in funds in the amount that were invoiced.

25 THE COURT: Okay. I'll hear a response on that.

1 I understand Transco's arguments with respect to how the
2 money was used. I don't think I've seen a fact issue yet
3 that says that some of, you know, certain contractors weren't
4 paid. You know, I mean, we can deal with that. But I
5 struggle to see damages because of that. If you want to use
6 that evidence as good faith on Welded's part in terms of
7 billing, maybe.

8 But I think we've talked about this before.
9 Contractors who are ultimately paid, there are no liens on
10 the property, on the project, that anybody showed me, which
11 could've resulted in damages if there were, and so when I'm
12 trying to focus and distill this case, so that's manageable,
13 and focus on the issues that I really think the parties
14 should put evidence on, it's what are the facts that lead to
15 damages that are awardable.

16 So, I'm not making any judgement today because I
17 haven't heard the evidence. But I'm not sure how much of
18 it's going to be germane to an ultimate decision I'm going to
19 make if that's what you're relying on to show Welded is not
20 entitled to something that is unpaid and owed under the
21 contract.

22 MS. EWALD: And Your Honor, I appreciate that and
23 I would submit that from a procedural aspect, which I think
24 the way it's addressed in the pretrial conference order, from
25 a procedural aspect, I would say it is not an amendment of

1 the pleadings that has occurred to date. And so, I would say
2 for the purpose of the pretrial conference, that there is
3 nothing --

4 THE COURT: For me to do.

5 MS. EWALD: Your Honor, that's what I submit.

6 THE COURT: The stipulation that was circulated,
7 that's something that Transco doesn't feel is appropriate to
8 sign?

9 MS. EWALD: And Your Honor --

10 THE COURT: And I haven't seen it, so I don't
11 know.

12 MS. EWALD: I'm trying to recall the stipulation.
13 I believe it was circulated in 2020. And it was at the time
14 that a discovery deposition discovery was ongoing in late
15 2020 throughout 2021. And so, I think that we were getting
16 our arms around the facts of the case and whether they
17 comported with the stipulation that was being sought.

18 THE COURT: Okay. Thank you.

19 MS. EWALD: On my list as well, I think that this
20 is typically how it would work if the Court reporter would be
21 remote, would not be in the courtroom, but that there would
22 be a transcript prepared of the evidence.

23 THE COURT: So, I don't have a court reporter. I
24 have an ECRO who's sitting right there. And he's in the
25 courtroom and someone will be in the courtroom. And I don't

1 know how the transcript gets done. It gets done remotely.

2 MS. EWALD: I understand. And I will let my --

3 THE COURT: If you want a daily, if that's what
4 you're saying, if you want a separate court reporter and a
5 daily that's different from the official, I don't -- I
6 actually haven't had that request before.

7 COURT REPORTER: There's a standing order already
8 in this case. Reliable is the transcriber, they'll generally
9 get it out in a couple days. I know it's urgent as urgent can
10 be. I think you can request they do it on daily basis with
11 prior arrangements but I suggest you contact them, their
12 information is on the docket.

13 MS. EWALD: Thank you very much, sir. I think my
14 colleague, Mr. Murley, may have already had the mechanics of
15 this down. I just wanted to ensure that we addressed it with
16 the Court in the event there was any preferences in that
17 regard.

18 THE COURT: I don't get a preference on a court
19 reporter.

20 MS. EWALD: Understood, Your Honor. Do you have
21 any questions for me with regard to the pretrial order?

22 THE COURT: I want to hear a response and see what
23 we have left.

24 Mr. Murley, did you want to address the Court?

25

1 MR. MURLEY: Good morning, Your Honor. Luke
2 Murley, Saul Ewing.

3 THE COURT: Good morning.

4 MR. MURLEY: On the issue of the transcript, I
5 think the relief of what we're asking for as for the Court, I
6 don't know if the Court cares, is to have the court reporter
7 on Zoom creating a live transcript and for the transcript
8 that that court reporter makes to be the official transcript.
9 It would be the same court reporter that makes the official
10 transcript in the normal course. We'd get the recording and
11 then order it for the days after.

12 What we're just asking is for the court reporter
13 to be present on Zoom which I don't know that the Court has
14 an issue with and for that to be the official transcript, we
15 just think as a matter of efficiency --

16 THE COURT: If you all can arrange it and it's
17 paid for, I don't care. I don't have the funds to get an
18 expedited daily transcript.

19 MR. MURLEY: Agreed, Your Honor. That would be
20 the parties -- if the parties wish to have a real time or a
21 daily transcript, that would be on the parties.

22 THE COURT: That's fine.

23 MR. MURLEY: Thank you, Your Honor.

24 MR. GUERKE: Kevin Guerke again, Your Honor. I'll
25 address the withdrawal first.

1 THE COURT: Okay.

2 MR. GUERKE: By this stipulation and in this
3 pretrial conference, we are requesting the Court grant our
4 application to amend our pleadings to withdrawal the
5 consequential damages as described in the stipulation that we
6 sent back in 2020. And that's again described in our
7 pretrial order on Page 57.

8 I don't have much to add because the Court
9 addressed the issues that we see with the argument that
10 Transco wants to make related to the ASR funds. We
11 anticipate they will make a production out of a board level
12 presentation from March 2020 -- I'm sorry, from March 2018
13 because we've seen it in every interaction we've had with
14 Transco in the last three years. But to the Court's point,
15 it's not linked to any damages and we address that issue in
16 our motion *in limine* on this subject. But we ask to withdraw
17 or -- we told them that we withdrew this claim in 2020, two
18 plus years before we filed that motion *in limine*.

19 Your Honor, on the sequestration issue, there's
20 been a request for sequestration of fact witnesses but not
21 the corporate rep. We don't have an issue with that.
22 However, we would expect that the corporate representative
23 would be the same throughout the trial and that they're not
24 bringing in new corporate representatives to listen to the
25 testimony every day, or someone new later in the week, et

1 cetera. So, if there's a corporate rep, that reps locked in.
2 That's fine with us. But we don't want this revolving chair
3 of new people to listen to the evidence.

4 On the deposition designations, Your Honor, I just
5 wanted to make the Court aware that in instances where a
6 witness was designated as a 30(b)(6) witness, they were also
7 being deposed as individual witnesses. So, these transcripts
8 are not only 30(b)(6) or only individual capacity.

9 THE COURT: So, it was jointly and not like
10 sequentially?

11 MR. GUERKE: Correct. So, that could be an issue
12 if we're dealing with 32(a) and trying to designate what's
13 being called 30(b)(6) corporate rep testimony. May we have a
14 moment, Your Honor?

15 THE COURT: Yes.

16 (Pause)

17 MR. GUERKE: It's our position, Your Honor, that
18 if a witness is live, that witness, he or she, should be
19 crossed using the transcript if necessary and not have these
20 redundant questions on a subject and then also present
21 deposition transcripts at the same time.

22 There was one question I had, Your Honor, just as
23 a minor matter. Maybe it's not minor to the Court, but Your
24 Honor has designated August 22nd through the 31st and
25 September 6th and 7th as our ten trial days. Are there

1 periods within those ten trial days that the Court needs to
2 shut us down for a period of time?

3 THE COURT: There are. And we're going to go over
4 that.

5 MR. GUERKE: Okay. Do you have any questions,
6 Your Honor; otherwise, I'll sit down.

7 THE COURT: Okay. Just going through the list
8 here. On the confidentiality, I think we're okay with that.
9 I didn't hear a disagreement and I'll deal with highly
10 confidential documents, if they're designated as such, and
11 ask the parties to keep them to a limited -- as limited as
12 they can be. They won't go on the docket because they don't
13 here.

14 And if you're discussing something that's highly
15 confidential with the witness, make sure that witness knows
16 and knows the way around it because I've had it come out --
17 I've had testimony come out on the stand before because the
18 witness answered the question in a way that didn't protect
19 the confidentiality of the information. And once it's out,
20 it's out. So, I caution people.

21 The time we are going to split 50/50. I'm going
22 to time it. I don't actually think I have a timer. So, I
23 would like -- we probably can go get one. But I would also
24 like the parties to be keeping track of the time for me and
25 have some agreement that at the end of the day, take a look

1 at it, let's make sure we're all in agreement on the amount
2 of time each time used.

3 MR. NEIBURG: Your Honor, may I - sorry, Michael
4 Neiburg from Young Conaway.

5 Your Honor, last fall we had a large trial before
6 Judge Shannon on the matter. I think the parties worked it
7 out well where they -- each side had a person that did it.
8 They'd conferred at the end of each trial date and inform the
9 Court as to where they're at.

10 THE COURT: That's fine.

11 MR. NEIBURG: So, unless Your Honor wants to have
12 the trial clock --

13 THE COURT: No. I thought you were going to say
14 you bought Judge Shannon a timer.

15 MR. NEIBURG: The parties worked together and
16 every day they would let the Court know where the time is at.

17 THE COURT: Thank you. Okay. In terms of
18 presentation, you all went through that. We talked about
19 openings. I will probably want post-trial briefing. I'll
20 let you know. I will probably definitely want argument on
21 certain things. I'll let you know about that too.

22 On terms of sequestration on fact witnesses, I
23 heard -- I don't think I had heard disagreement with respect
24 to a corporate rep.

25

1 So, Ms. Ewald, is there going to be one corporate
2 rep from Transco?

3 MS. EWALD: Yes, Your Honor. There will be one
4 corporate representative.

5 THE COURT: Okay. Then I think we're in
6 agreement. The other witnesses will be sequestered by the
7 corporate rep from each side. And I assume Welded will have
8 one?

9 MR. GUERKE: Yes, Your Honor.

10 THE COURT: Okay. Corporate rep from each side is
11 not sequestered and I didn't hear any issue with respect to
12 letting experts hear testimony, correct?

13 MR. GUERKE: Correct, Your Honor.

14 THE COURT: Okay. Exhibits based on depositions,
15 if there are objections to the exhibits, my current thinking
16 is that I'll deal with them. They'll be on a sheet and I'll
17 deal with them as I read through the testimony and decide
18 probably whether or not I really need the exhibits. But I
19 think I'll decide them as I read the deposition. If I have
20 any issues with respect to them, I can bring that to the
21 parties subsequently.

22 Demonstrative, I think you all said you could
23 probably work it out, one or two days. I would like the
24 parties to have flexibility. I know things happen during
25 trial and you need the flexibility to adjust as the trial

1 develops. So, my suggestion would be 24 hours. I think that
2 would usually work. And the Rule 32(a)(1), I'll have to look
3 at that. And I do think it has to be subject to redundancy,
4 repetitiveness, whatever. And I haven't looked at that rule
5 in a while. But I do recall the interesting aspects of it.

6 So, I would ask that if -- I don't think --
7 especially since we're timing the trial, I don't think we
8 should use depositions to augment testimony from the bench
9 and therefore get out from the use of your time. That is
10 part of it too. I think there needs to be a fairness on
11 that. But I've got to look at that rule.

12 My personal preference would be I've got the
13 witness on the stand, I prefer witness testimony to a
14 deposition testimony, and I would prefer not to read,
15 especially not, any significant testimony in a deposition
16 where I've had the person on the stand and can judge their
17 credibility that way.

18 Let me say this too, I noticed a lot of foundation
19 objections. And, you know, certainly I'll entertain those,
20 but if those could be worked out ahead of time, I would
21 appreciate it. If there's really just no foundation
22 objection, if it's really more technical than anything, but
23 there's really no dispute about the document itself and its
24 legitimacy, I would ask to keep those to a minimum. I think
25 I've written on that, you know, that I'm allowed to look at,

1 sort of, surrounding circumstances in the document and decide
2 if I think it's legitimate. So, even if you can't lay a
3 proper textbook foundation, if we've got foundation, again,
4 objections, I'll deal with them. But if they're really not,
5 let's try to keep our objections to real significant
6 objections.

7 Okay. And as I said, I'm sure before, I'm not
8 going to take a dump of exhibits. So, if you want me -- if
9 the exhibits going to get introduced, whether that's via
10 deposition or in Court, that's fine. But I'm not going to be
11 reading exhibits that haven't been used.

12 MR. GUERKE: Your Honor, may I ask a question on
13 that subject?

14 THE COURT: Yes.

15 MR. GUERKE: We have a deposition that's been
16 designated and there are exhibits that were used with that
17 deposition. Is it acceptable that in our post-trial
18 briefing, we mention the deposition transcript, the testimony
19 itself, and also reference the exhibit that we want the Court
20 to be aware of --

21 THE COURT: Yes.

22 MR. GUERKE: -- and that satisfies what you're
23 describing?

24 THE COURT: Yes. I want an explanation of why I'm
25 looking at it. But, yes, you can do it in the -- if it's

1 coming through a deposition so that it can be part of the
2 record that way, and there's no objections, and I accept it
3 as part of the exhibits, then, yes. In the post-trial brief,
4 I would like to specifically reference it. What page if it's
5 a huge document I'm supposed to be looking at. And you
6 should be telling me why it's relevant. I should get the
7 relevance of it from the context in which it's being
8 referenced in the post-trial brief.

9 MR. GUERKE: Okay. Thank you, Your Honor.

10 THE COURT: I think at the end of the trial, I'm
11 going to want a joint exhibit list of what's been -- an
12 exhibit list of what's been admitted even though we'll try to
13 keep track of that too obviously. But what's been admitted
14 so if there's any disagreements, we work that out. And when
15 you're putting that together, hopefully you're not seeing
16 things you aren't going to reference.

17 Okay. So, I think, if my notes are correct, I've
18 addressed all the issues. But let me know if there's
19 anything I didn't address.

20 MR. GUERKE: Two items, Your Honor. One is the --
21 our applicant.

22 THE COURT: The amendment.

23 MR. GUERKE: Yes. And the other one was we've
24 discussed with counsel having our pretrial brief set 40 pages
25 instead of the 30 pages. I believe we've reached agreement

1 on that and I'm not sure if we mentioned that specifically in
2 the pretrial order, but we make that request now if the Court
3 will allow it. If not, we will adjust.

4 THE COURT: I'll permit it if parties think it's
5 necessary to go beyond thirty pages. I'll permit it. The
6 closer you can keep it to thirty, the better. I don't know
7 that I'll have a chance to get to the motions *in limine*, I
8 will likely not. So, assume that I'm not granting them and
9 that would go to trial and those issues. And I will save
10 ruling on that until after trial.

11 Amendments of the pleadings. I'm not sure I've
12 heard a prejudice to Transco by permitting an amendment to
13 withdraw certain claims. I'd like to see the stipulation
14 that was circulated a couple of years ago. So, please submit
15 that.

16 MR. GUERKE: I have a hard copy, Your Honor.

17 THE COURT: I'll take it.

18 MR. GUERKE: There's the transmittal email also,
19 Your Honor. Would you like just the stipulation or the
20 transmittal email as well?

21 THE COURT: Just the stipulation.

22 MR. GUERKE: May I approach, Your Honor?

23 THE COURT: You may. I see this was dated in
24 December of 2020 and that's when it was circulated?

25

1 MR. GUERKE: It was circulated December 2nd, 2020,
2 Your Honor. But it was discussed prior to that.

3 THE COURT: Well, I'm going to let the -- I'm
4 going to grant the request that the debtor be permitted to
5 amend its complaint to withdraw the claims for these specific
6 damages, consequential damages, as set forth in the
7 stipulation. I don't see a harm to Transco.

8 If Transco thinks that evidence that could have
9 gone to these claims for consequential damages are relevant
10 to something else, you're free to put the evidence in as
11 relevant to something else. But I don't see the harm. I
12 haven't heard a harm. And I'll deal with relevancy issues
13 either as I hear them or subsequently. But I need something
14 -- there needs to be something on the docket with respect to
15 that so it's clear. So, I'd like -- so, I'll enter a very
16 short order so it's on that it's been withdrawn.

17 There was also, I noted, in the -- there was a
18 request to amend that Transco wants to amend its proof of
19 claim. I'm not sure that I've seen an analysis of the
20 standards for amending proofs of claim. I may have missed
21 it. I don't think I've seen it.

22 MR. GUERKE: We briefly referenced a standard in
23 the pretrial, Your Honor, on that subject. And as far as the
24 amendment goes, the language that we took from that
25 stipulation is embedded in the pretrial order at Page 57.

1 THE COURT: Yes. I see that. I see -- in terms
2 of Transco's proof of claim, I see the provision quoted from
3 the plan that the plan doesn't impair Transco's rights, if
4 any, to amend its claim to the extent permitted under the
5 applicable bankruptcy law. But that's not the bankruptcy
6 standard.

7 So, if Transco wants to do that, I just would like
8 some filing brief with respect to why Transco meets the
9 standard for amending proofs of claim after the bar date.
10 And, of course, Welded can respond to that. Then I'll
11 address it. It's a different standard than a complaint
12 standard.

13 MR. GUERKE: Thank you, Your Honor.

14 THE COURT: Anything else I missed before I go to
15 schedule?

16 MR. GUERKE: Not that -- not from Welded's side,
17 Your Honor.

18 THE COURT: Okay. So, I'm trying to keep
19 interruptions to a minimum. But I do have two things. On
20 our first day of trial, I have a call at 4:00 o'clock that I
21 have to take. So, I'll probably be done by quarter to four.
22 That's on the 22nd. That call is probably an hour so it's
23 kind of at the end of the day. So, we may just end for the
24 day at 3:45.

25

1 And then on the 24th which is that Thursday, I
2 have my Chapter 7 day at 2:30. That's usually light. Most
3 things settle out. So, I would just anticipate on taking a
4 break at 2:30 and coming back because that's often not even
5 half an hour. And we'll see if there is anything that looks
6 like it's going to be major. I'll see if I can move it so
7 that we're really just taking a brief break at 2:30 or a
8 little before, probably 2:15, so we can set up everything for
9 the 2:30 docket. Other than that, we're good.

10 I usually start the day at 10:00 and end around
11 6:00. I could move it up slightly but I'm also trying to
12 leave some time so that if I have something that I have to
13 do, it gets done in the morning before we start. Is that --
14 how does that sound for the parties, a 10:00 to 6:00 thing?
15 I could go 9:30 to 5:30. If we're in the middle of a witness,
16 I'm not going to really break in the middle of a witness.
17 We'll try to, you know, make sure that witnesses aren't left
18 hanging overnight, but we'll have to see. If they're several
19 hours later, we'll deal with that.

20 But so, it's not a hard and fast at the end of the
21 day, but again, I need to leave some time to take a look at
22 what else is happening on my docket. Thoughts? Questions?

23 MS. EWALD: Your Honor, we're prepared to proceed
24 with the schedule you proposed. Our witnesses are here from

25

1 out of town so they're going to be available at any time the
2 Court desires.

3 THE COURT: Okay. Thank you.

4 MS. EWALD: They are construction folks so they
5 may have been up since 4:00 a.m. but -- thank you.

6 MR. GUERKE: Your Honor, we are -- whatever
7 schedule Your Honor wants is acceptable to us. I think we
8 might prefer the 9:30 to 5:30, but it doesn't -- it's not a
9 big issue.

10 THE COURT: And it is a different trial than my
11 regular motion docket. Let's go 9:30 to 5:30. And if I'm
12 delayed a little bit in the morning on a particular day,
13 we'll deal with that. But let's plan on 9:30 to 5:30, my
14 courtroom. I'm hoping it's fixed in the next few days.

15 Okay. Anything else?

16 MR. GUERKE: Yes, Your Honor. On the daily
17 schedule, do you normally take a set time for a break in the
18 morning, break in the afternoon, and do you have a normal
19 time that you'd like to break for lunch?

20 THE COURT: So, I'm really bad because I usually
21 don't take breaks, and I forget, and my staff has to tell me
22 to take them. So, I don't have a set time. I'd prefer to
23 sort of look around witnesses, you know, if we're at the end
24 of a witness. If a witness needs a break, obviously we can
25 take one. Sometimes counsel has had to remind me to take a

1 break because they need one. So, no. But yes, I guess I'll
2 try to remember to take a break in the morning. I'm usually
3 a later lunch person. Somewhere on the 1:00 o'clock, old
4 school Delaware lunch.

5 But, again, it's going to sort of depend on if
6 there's a more natural break at 12:00, we'll take it at
7 12:00. If there's a more natural break at 12:30, we'll do
8 that. But probably more like 1:00 o'clock. And just remind
9 me. If anybody needs a break, please, because for whatever
10 reason I just don't think about taking them. I'm pretty
11 focused. Anything else?

12 MR. GUERKE: Other than the pending summary
13 judgment motions, Your Honor, we don't have anything to add
14 to the pretrial conference.

15 THE COURT: Thank you. And my thought had been to
16 have my ruling done and it didn't get done because of other
17 things. So, but I am hoping to have it done by Friday.
18 That's my goal. So, I'll have Ms. Batts or Ms. Johnson reach
19 out. But that's my goal, is to have my oral ruling done by
20 Friday. You all can all appear on Zoom. You don't have to
21 be here.

22 And my present thought is I will rule orally and
23 then I will put that ruling on the docket as just a bench
24 rule, a memorialization of the bench ruling. I have found
25 that's helpful to people sometimes depending on the nature of

1 the ruling and I think it may very well be appropriate here
2 given that it's contract interpretation. So, that's my
3 thought. I'll give it orally and then it will get put on the
4 docket as a bench ruling. And we'll let you know a time.
5 And I'm really hoping I can get it done by then.

6 MR. GUERKE: Thank you, Your Honor.

7 THE COURT: Anything else?

8 MS. EWALD: Your Honor, may I please the Court,
9 Shelley Ewald, attorney for Transco.

10 We do have a motion that we filed with regard to a
11 supplemental document for the Courts consideration in
12 connection with the equipment fee coverage. And it is a
13 document. It's on our exhibit list as D-708. I believe it's
14 on the plaintiffs exhibit list as P-186. It is a document
15 that, in our view, responds to the question whether the
16 specialty equipment repair and included equipment repair
17 would be separately tracked.

18 And we have moved under the Local Rule 9006-1(d)
19 to request leave by the Court to submit it as a supplemental
20 submission. We provided it to the counsel for Welded and
21 they have objected.

22 THE COURT: Thank you. I did see that. I will
23 rule on that in my ruling on the oral ruling I'm going to
24 give on Friday. I'll include that.

25

1 MS. EWALD: Thank you, Your Honor. And I
2 apologize in advance if I am not able to be present for the
3 oral ruling. I have a board meeting I have to conduct on the
4 West Coast and I'll be flying most of the day on Friday, but
5 I will do what I can to be present.

6 THE COURT: It's not an issue. I recognize its
7 very last minute. I appreciate counsels' flexibility in this
8 case. I've been doing a lot of things last minute so I
9 appreciate it. Certainly, you're not required to be in
10 attendance by Zoom and hopefully Ms. Murley or Mr. Murley or
11 somebody from his office can be on it. And again, I will put
12 -- and it's another reason to put the bench ruling on the
13 docket so that it can be read by everybody as well.

14 MS. EWALD: I understand, Your Honor. And I think
15 we will have participants available on Friday just perhaps
16 not myself. Thank you.

17 THE COURT: That's fine. Okay. Anything else?

18 MR. GUERKE: No, Your Honor.

19 THE COURT: Okay. Thank you very much counsel.
20 We're adjourned.

21 (Proceedings concluded at 11:10 a.m.)
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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ Mary Zajaczkowski

August 4, 2023

Mary Zajaczkowski, CET-531
Certified Court Transcriptionist
For Reliable