Docket #0036 Date Filed: 9/3/2019

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
WELDED CONSTRUCTION, L.P., *et al.*,[1] Debtors and Debtors In Possession.	)	Case No. 18-12378 (KG)
	)	(Jointly Administered)
WELDED CONSTRUCTION, L.P. AND WELDED CONSTRUCTION MICHIGAN, LLC, Plaintiffs, vs. PRIME NDT SERVICES, INC., Defendant.	)	Adv. Pro. No. 19-50180 (KG)
	)	**Ref. Docket No. 16**

CERTIFICATION OF COUNSEL REGARDING
APPOINTMENT OF MEDIATOR

The undersigned counsel for the above-captioned debtors and debtors in possession (collectively, the "Debtors" or "Plaintiffs") hereby certifies as follows:

1. On March 27, 2019, Plaintiffs commenced an adversary proceeding by filing a *Complaint* [Adv. Docket No. 1] alleging breach of contract and breach of warranty claims against defendant Prime NDT Services, Inc. (the "Defendant").

2. On April 26, 2019, Defendant filed, among other things, a *Partial Motion to Dismiss Plaintiffs' Complaint* (the "Partial Motion to Dismiss") [Adv. Docket No. 7], requesting

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the Court (1) dismiss Plaintiffs' claims for consequential damages, including those based upon "acceleration costs," and preclude Plaintiffs from presenting evidence or argument pertaining to "acceleration" damages at time of trial; and (2) dismiss Plaintiffs' claim for breach of warranty.

3. On May 31, 2019, Plaintiffs filed their opposition to the Partial Motion to Dismiss [Adv. Docket No. 12], and on June 7, 2019, Defendant filed its reply in support of its Partial Motion to Dismiss [Adv. Docket No. 14].

4. On June 10, 2019, the Court entered the *Agreed Scheduling Order* (the "Agreed Scheduling Order") [Adv. Docket No. 16], governing discovery and related matters in this adversary proceeding.

5. Following oral argument on the Partial Motion to Dismiss, the Court issued a *Memorandum Opinion* [Adv. Docket No. 30] and entered an order (the "Decision Order") [Adv. Docket No. 33], denying Defendant's Partial Motion to Dismiss in its entirety.

6. Pursuant to the Agreed Scheduling Order, Plaintiffs and Defendant (together, the "Parties") were required to file a stipulation regarding the appointment of a mediator (the "Stipulation") no later than fourteen (14) days after entry of the Decision Order.

7. The Parties have proposed that David A. White of McCarter & English, LLP be appointed as mediator in this adversary proceeding. In accordance with the Agreed Scheduling Order, the Parties hereby submit a proposed form of order (the "Proposed Order"), attached hereto as **Exhibit A**, appointing David A. White as mediator in this matter. The Defendant has reviewed the Proposed Order and consents to its entry.

8. Accordingly, Plaintiffs respectfully request that the Court enter the Proposed Order at its earliest convenience without further notice or a hearing.

Dated: September 3, 2019
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Erin D. Edwards

Sean M. Beach (No. 4070)
Robert F. Poppiti, Jr. (No. 5052)
Erin D. Edwards (No. 4392)
Tara C. Pakrouh (No. 6192)
Rodney Square
1000 North King Street
Wilmington, DE 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

Counsel to the Plaintiffs

EXHIBIT A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
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In re:	)	Chapter 11
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	)	(Jointly Administered)
WELDED CONSTRUCTION, L.P. AND WELDED CONSTRUCTION MICHIGAN, LLC,	)	
Plaintiffs, vs.	)	Adv. Pro. No. 19-50180 (KG)
PRIME NDT SERVICES, INC.,	)	
Defendant.	)	

ORDER APPROVING STIPULATION
REGARDING APPOINTMENT OF MEDIATOR

Upon consideration of the *Stipulation Regarding Appointment of Mediator* (the "Stipulation"),[2] a copy of which is attached hereto as **Exhibit 1**; and it appearing that Prime NDT Services, Inc. does not consent to the entry of final orders or judgments by the Court; after due deliberation and sufficient cause appearing therefor, it is hereby

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[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Stipulation.

ORDERED that the Stipulation is approved.

EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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	(Jointly Administered)
WELDED CONSTRUCTION, L.P. AND WELDED CONSTRUCTION MICHIGAN, LLC, Plaintiffs, vs. PRIME NDT SERVICES, INC., Defendant.	Adv. Pro. No. 19-50180 (KG)
	Ref. Docket No. 16

STIPULATION REGARDING APPOINTMENT OF MEDIATOR

Plaintiffs, Welded Construction, L.P. and Welded Construction Michigan, LLC (collectively, the "Plaintiffs") and defendant Prime NDT Services, Inc. (the "Defendant" and together with the Plaintiffs, the "Parties"), by and through their undersigned counsel, subject to approval of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), hereby stipulate and agree as follows:

1. Pursuant to Rule 9019-3 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "Local Rules") and the Agreed Scheduling Order [Adv. Docket No. 16], the Parties select David A. White as the

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mediator in the non-binding mediation (the "Mediation") of this adversary proceeding (the "Adversary Proceeding"). If the mediator is later found to be conflicted or if the Parties otherwise determine it to be appropriate, the Parties may in the future stipulate to the appointment of an alternative mediator who, subject to Bankruptcy Court approval, would then be substituted for the above-named person as mediator in the Adversary Proceeding.

2. Subject to the terms of this Stipulation, any Order of the Bankruptcy Court approving this Stipulation, or any other Order of the Bankruptcy Court, the Mediation shall be conducted in accordance with the Agreed Scheduling Order and the Local Rules. To the extent any part of this Stipulation conflicts with Local Rule 9019-5, the terms and provisions of this Stipulation shall govern.

3. The Parties shall share equally in the payment of the mediator's normal fees and reasonable expenses incurred in connection with the Mediation.

4. Each Party participating in the Mediation must appear with at least one (1) principal or other authorized employee or agent with authority to make a decision binding upon such person or entity.

5. Pursuant to the Agreed Scheduling Order, on or before forty-five (45) days from the mediator's appointment, the mediator shall either (a) file the mediator's certificate of completion or (b) if the Mediation is not concluded, file a status report that provides the projected schedule for completion of the Mediation.

6. Without limiting the applicability of Local Rule 9019-5, and unless otherwise ordered by the Bankruptcy Court: (i) all discussions among any of the Parties relating to or made in connection with the Mediation; (ii) any mediation statements and any other documents or information provided to the mediator or the other Party in connection with or during the

course of the Mediation; and (iii) correspondence, offers and counteroffers produced for or as a result of the Mediation shall be strictly confidential and shall not be admissible for any purpose in any judicial or administrative proceeding, and no person or Party participating in the Mediation, whether a direct participant or not, including counsel for any Party, shall in any way disclose to any non-party or to any court, including, without limitation, in any pleading or other submission to any court, any such discussion, mediation statements, other document or information, correspondence, offer or counteroffer which may be made or provided in connection with the Mediation.

7. To the extent that any Party to the Mediation is in possession of privileged or confidential information provided to it by the other Party pursuant to the terms and conditions of a confidentiality agreement between the Parties or an Order of the Bankruptcy Court, such information may be disclosed to the mediator for purposes of the Mediation, but shall otherwise remain privileged and confidential.

Dated: September 3, 2019
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Erin D. Edwards

Sean M. Beach (No. 4070)
Robert F. Poppiti, Jr. (No. 5052)
Erin D. Edwards (No. 4392)
Tara C. Pakrouh (No. 6192)
Rodney Square
1000 North King Street
Wilmington, DE 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

Counsel to the Plaintiffs

GORDON REES SCULLY MANSUKHANI LLP

/s/ Michael C. Heyden, Jr.

Michael C. Heyden, Jr. (No. 5616)
1201 N. King Street
Wilmington, DE 19801
Telephone: (302) 992-8954
Facsimile: (302) 724-6444

Attorney for Defendant Prime NDT Services, Inc.