IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In Re: WELDED CONSTRUCTION, L.P., et al. *et al,* Debtors and Debtor in Possession.	Chapter 11 Case No. 18-12378 (KG) (Jointly Administered)
WELDED CONSTRUCTION, L.P., Plaintiff, **v.** PRIME NDT SERVICES, INC., Defendant.	Adversary Proceeding Adv. Pro. No. 19-50180 (KG)

DEFENDANT, PRIME NDT SERVICES, INC.'S MOTION *IN LIMINE* TO PRECLUDE JOSHUA BELL FROM OFFERING IMPERMISSIBLE OPINIONS AS TO LEGAL CONCLUSIONS

Defendant, Prime NDT Services, Inc. ("Prime") moves for an Order precluding Welded Construction, L.P. and Welded Construction Michigan, LLC (collectively "Welded") from presenting expert evidence as to legal conclusions as follows:

1. Prime was retained by Welded to perform NDE examination of welds that Welded would make on the Project. *See* Compl. at ¶ 15. After Welded completed a weld on the pipeline, Prime would perform an "x-ray" on the weld to determine whether the weld was free from imperfections. *Id*.

2. Welded alleges that approximately 70 of Prime's x-rays were non-conforming, necessitating certain remedial work, particularly excavating the area surrounding the weld, re-x-raying the weld, and backfilling and restoring the affected land. *Id*. at ¶¶ 22-26.

3. Because the Subcontract between Welded and Prime contains a limitation on the recovery of consequential damages, Welded has offered Joshua Bell as a purported liability expert. *See* Ex. 1, Report of Joshua Bell. Mr. Bell appears to be a level III non-destructive examination technician.

4. Relevant here, Mr. Bell opines that Prime should have had "random sampling of the radiographic film and proficiency reviews." *See* Ex. 8, Bell report. Mr. Bell further claims that, because Prime did not oversee or place quality assurance over Mr. Springer it was "grossly negligent" or engaged in willful misconduct." *Id*.

5. "Opinion testimony that states a legal standard or draws a legal conclusion by applying law to the facts is generally inadmissible." *In re C.R. Bard Inc.*, 948 F. Supp. 2d at 629 (citing *U.S. v. McIver*, 470 F.3d 550, 562 (4th Cir. 2006)); *see also an expert cannot offer legal conclusions. See, e.g., Spencer v. Wal-Mart Stores East, LP*, C.A. No. 04C-08-144PLA, 2006 WL 1520203, at *2(Del. Super. Ct. June 5, 2006) (noting that "'it is exclusively within the province of the trial judge to determine issues of domestic law"' and granting defendants' motion in limine because, inter alia, his testimony consisted of a legal conclusion) (citation omitted); *N. Am. Philips Corp. v. Aetna Cas. & Sur., Co.*, C.A. No. 88C-JA-155, 1995 WL 628447, at *3 (Del. Super. Ct. Apr. 22, 1995) (Delaware law "requires 'exclusion of expert testimony that expresses a legal conclusion.'").

6. Mr. Bell has no business telling the Court what is or is not gross negligence. While Prime reserves the right to move to preclude or limit Mr. Bell's opinions following his deposition, it is patently obvious that he cannot instruct the Court as to the applicable law, or how to apply the law to the facts of this case. Thus, Mr. Bell must be precluded from offering any legal conclusion or opinion at the time of trial.

WHEREFORE, Prime NDT Services, Inc. requests that the Court enter an Order precluding Joshua Bell from offering opinions of legal conclusions, including but not limited to gross negligence or willful misconduct at the time of trial.

Respectfully submitted,

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Dated: January 7, 2019

CERTIFICATE OF SERVICE

I certify that on January 7, 2019, I electronically filed the foregoing with the Court using the CM/ECF system, and served counsel below via the CM/ECF system.

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	)	Adv. Pro. No. 19-50180 (KG)
v.	)	
PRIME NDT SERVICES, INC., Defendant.	)	

ORDER

AND NOW, this ___ day of _____, 2020, upon consideration of the Motion *in Limine* of Prime NDT Services, Inc., to preclude Joshua Bell from offering testimony pertaining to legal conclusions, it is hereby ORDERED that Prime NDT Services, Inc.'s Motion is GRANTED and Joshua Bell is precluded from offering opinions pertaining to gross negligence, recklessness, or intentional acts at the time of trial.

BY THE COURT:

_____
J.