IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
WELDED CONSTRUCTION, L.P., *et al.*,[1]	)	Case No. 18-12378 (KG)
	)	(Jointly Administered)
Debtors.	)	
	)	**Status Conference:**
	)	**March 4, 2020 at 10:00 a.m. (ET)**

DEBTORS' CASE UPDATE AND STATUS REPORT
PURSUANT TO SECTION 105(d)(1) OF THE BANKRUPTCY CODE

Pursuant to the Court's request of February 6, 2020, Welded Construction, L.P. and Welded Construction Michigan, LLC, the debtors and debtors in possession (collectively, the "**Debtors**") in the above-captioned cases (the "**Chapter 11 Cases**") hereby submit this case update and status report in advance of the status conference scheduled on March 4, 2020 at 10:00 a.m. (ET) (the "**Status Conference**") to provide the Court with an overview and status of the Chapter 11 Cases and related adversary proceedings (the "**Adversary Proceedings**").

I. Overview of the Case

A. The Circumstances Leading to the Chapter 11 Cases

1. For decades, the Debtors operated as a mainline pipeline construction contractor headquartered in Perrysburg, Ohio. *See Declaration of Frank Pometti in Support of Debtors' Chapter 11 Petitions and First-Day Motions* [Docket No. 4]. Leading up to October 22, 2018, (the "**Petition Date**"), the Debtors were performing ongoing construction work on five active pipeline projects (collectively, the "**Projects**") located in Ohio, Michigan, Pennsylvania, and West

[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 P.O. Box 470, Perrysburg, OH 43552-0470.

Virginia: namely, the (i) Atlantic Sunrise Pipeline (the "**Williams/ASR Project**") owned by Transcontinental Gas Pipe Line Company, LLC ("**Transco**"), an affiliate of The Williams Companies, Inc. ("**Williams**"); (ii) Saginaw Trail Pipeline (the "**2018 Consumers Project**"), owned by Consumers Energy Company ("**Consumers**"); (iii) Mariner East Pipelines (the "**ETP Project**"), owned by Sunoco Partners Marketing & Terminals L.P. and Sunoco Pipeline L.P. (collectively, "**Sunoco**"), affiliates of Energy Transfer Partners, L.P. (collectively, "**ETP**"); and (iv) the Leach Xpress and Mountaineer Xpress Pipelines (collectively, the "**Columbia Gas Project**"), owned by affiliates of TC Energy Corporation ("**TC Energy**"), as successor to NiSource Corporate Services Company/Columbia Pipeline Group and Columbia Gas Transmission, LLC ("**Columbia Gas**").

2. In the months before the Petition Date, as most of the Projects neared completion, the Debtors began facing a series of challenges on the Projects and from certain owners of the Projects (collectively, the "**Customers**") that combined to impair the Debtors' operating cash flow and near-term liquidity. These challenges began with significant permitting delays and, in the months prior to the chapter 11 filing, included: (a) inclement weather, regulatory delays, shutdowns and other delays that in many instances were not specific to the Debtors; (b) cost overruns on Projects resulting from, among other things, the permitting, weather and other delays; and (c) significant unprecedented payment delays or disputes with Customers.

3. Of particular note, on October 4, 2018, once Welded successfully achieved mechanical completion on a 96-mile expanse of the Williams/ASR Project and FERC approval was firmly in hand, Transco withheld $23,563,538 and sued the Debtors (the "**Prepetition Transco Complaint**") in the District Court of Tulsa County for the State of Oklahoma, styled *Transcontinental Gas Pipe Line Company, LLC v. Welded Construction, L.P.*, asserting breach of

contract. The Debtors vigorously dispute the allegations contained in the Prepetition Transco Complaint and contend that Transco has improperly withheld significant amounts of money owed to the Debtors for work performed on the Williams/ASR Project, as detailed below.

4. Despite the filing of the Prepetition Transco Complaint, the Debtors continued to engage with Transco, and their other Customers, in an attempt to resolve disputes and avert the need for the filing of the Chapter 11 Cases. However, the filing of the Prepetition Transco Complaint was quickly made public to the market, creating confusion and concern among the Customers, employees, subcontractors, and vendors.

5. As a bankruptcy filing became a potential (if not likely) outcome, it was imperative for the Debtors and their Customers to set aside their disputes temporarily to achieve their common goals of completing the Projects and paying the Debtors' employees, subcontractors, and vendors. To that end, in the days leading up to the Petition Date, the Debtors engaged with their Customers to explore mutually beneficial options and ultimately entered into certain project completion agreements (collectively, the "**Customer Project Completion Agreements**" and each, a "**Customer Project Completion Agreement**") to ensure not only success during a looming chapter 11 case, but also a value-maximizing exit strategy from bankruptcy. Importantly, this approach allowed the Debtors to preserve certain claims against the Customers for a later date as they completed Project work and mitigated, to the extent possible, the claims of employees, subcontractors, and vendors. The objectives of the Customer Project Completion Agreements were generally as follows:

6. First, the Debtors and their advisors negotiated with their Customers to establish mutually agreeable terms on which the Customers would fund completion of unfinished Project work, until such pipelines could be placed into service. In general, the Customers agreed to pay

future expenses, payroll and union benefits and dues for the Debtors' subcontractors, vendors, and employees.

7. Second, funds were provided by the Customers to pay the Debtors' employees, subcontractors, and vendors for unpaid goods and services that, in a chapter 11 case, would likely become general unsecured claims against the Debtors. Without such funds and the promise of payment, these constituents likely would not have agreed to continue working on the Projects until completion.

8. Third, the Debtors secured debtor-in-possession financing to fund the Chapter 11 Cases. While the Debtors and their advisors engaged in a marketing effort to procure such funding, North American Pipeline Equipment Company, LLC, an entity that is under common ownership with the partners of Welded Construction, L.P., Ohio Welded Company, LLC and McCaig Welded GP, LLC, offered the best terms for a $20 million debtor-in-possession financing facility (the "**DIP Facility**") primarily secured by the Debtors' owned equipment. The DIP Facility was critical to permit the Debtors to pay for administrative expenses and other costs associated with the Chapter 11 Cases, while executing on their plans with Customers, completing the Projects, and satisfying significant employee, subcontractor, and vendor claims. The DIP Facility was paid in full following the Equipment Sale described below.

B. The Chapter 11 Cases

9. On the Petition Date, the Debtors commenced the Chapter 11 Cases. On October 30, 2018, the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") appointed an official committee of unsecured creditors (the "**Committee**").

10. The goals outlined by the Debtors at the outset of the Chapter 11 Cases have been achieved even prior to the confirmation of a chapter 11 plan. The Debtors achieved operational completion on all of the Projects that were pending at the time of the Petition Date, allowing their

Customers to begin profiting from the applicable pipelines. The Debtors, working cooperatively with the Committee, have utilized the chapter 11 process to monetize their assets in various ways including (i) entering into the Customer Project Completion Agreements and related settlement agreements resulting in the payment prior to Chapter 11 plan confirmation of over $181 million in prepetition employee, subcontractor, and vendor claims, over $56 million in administrative expense claims and the return of approximately $18 million to the Debtors' estates for the benefit of other stakeholders; (ii) assignment of a go-forward construction contract, which netted approximately $2.5 million dollars to the Debtors' estates; (iii) commencement of a thorough marketing and sale process (the "**Equipment Sale**") for the Debtors' substantial construction equipment assets, which netted approximately $30.4 million for the Debtors' estates; (iv) the sale of the Debtors' corporate headquarters in an amount of $2.7 million; and (v) settlements with certain parties resulting in over $8 million and the indemnity or waiver of approximately $47 million in claims.

11. With these hurdles behind them, the Debtors are now able to focus primarily on the remaining issues with other Customers and parties that were preserved at the outset of the Chapter 11 Cases, such as (i) prosecuting the action against Williams and Transco; (ii) obtaining payment of amounts owing under the Customer Project Completion Agreement among the Debtors and Columbia Gas and otherwise resolving certain payment disputes among the parties;[2] and (iii) prosecuting objections to certain claims, all in an effort to ensure a value-maximizing result for the Debtors' remaining stakeholders.

[2] Columbia Gas worked in earnest with the Debtors in the days preceding the bankruptcy filing, and the parties successfully negotiated a Customer Project Completion Agreement of the Columbia Gas Project. The Debtors and Columbia Gas continue to work toward a consensual resolution of the remaining issues between the parties.

12. The Debtors anticipate filing a consensual chapter 11 plan (the "**Chapter 11 Plan**") prior to the Status Conference. The Chapter 11 Plan is the culmination of months of negotiations with various interested parties, including the Committee and the Debtors' corporate parents. The Chapter 11 Plan favorably resolves and avoids potential protracted litigation with the Committee, provides meaningful recoveries to the Debtors' remaining general unsecured creditors, and proposes an efficient mechanism for winding down the Debtors' estates.

C. The Adversary Proceedings

i. Adversary Proceedings Initiated by the Debtors

13. The Debtors have initiated three adversary proceedings related to the Chapter 11 Cases: (i) *Welded Construction, L.P. v. Sunoco Pipeline L.P.*, Adv. Pro. No. 18-50928 (KG) (the "**Sunoco Adversary Proceeding**"); (ii) *Welded Construction, L.P. v. Prime NDT Services, Inc.*, Adv. Pro. No. 19-50180 (CSS) (the "**Prime Adversary Proceeding**"); and (iii) *Welded Construction, L.P. v. The Williams Companies, Inc.*, Adv. Pro. No 19-50194 (CSS) (the "**Williams Adversary Proceeding**").

14. The Debtors initiated the Sunoco Adversary Proceeding to, among other things, obtain declaratory relief with respect to the rights and obligations of Sunoco and the Debtors vis-à-vis the Chapter 11 Cases. The Sunoco Adversary Proceeding was resolved consensually, and, as discussed above, Sunoco ultimately satisfied the claims of all subcontractors and vendors in respect of the ETP Project. *See Order Approving Stipulation and Agreement Between the Debtors, Sunoco Partners Marketing & Terminals, L.P. and Sunoco Pipeline, L.P.* [Adv. Docket No. 16].

15. The Debtors initiated the Prime Adversary Proceeding to seek recovery of damages for Prime NDT Services, Inc.'s defective radiograph imaging on the ETP Project. The Debtors and Prime NDT Services, Inc. ("**Prime**") engaged in extensive discovery, motion practice, and pre-trial briefing. Ultimately, after two rounds of mediation and significant negotiation, the

Debtors and Prime arrived at a consensual resolution that will result in a $6.2 million recovery for the Debtors' estates, net of litigation costs. On February 27, 2020, the Debtors filed the *Debtors' Motion, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, for an Order Approving and Authorizing the Settlement Agreement By and Between the Debtors and Prime* [Adv. Docket No. 123], seeking approval of the settlement agreement to resolve the Prime Adversary Proceeding.

16. The Debtors initiated the Williams Adversary Proceeding to recover significant damages sustained on account of Transco's improper withholding of amounts owed to Welded for work performed on the Williams/ASR Project located in Pennsylvania. Welded performed its construction services on the Williams/ASR Project under a cost-reimbursement contract pursuant to which Transco was obligated to, among other things, (i) reimburse Welded for labor costs incurred, (ii) pay Welded an equipment fee based on labor costs incurred, and (iii) pay Welded a fixed fee of approximately $50 million to cover profit and back-office services.

17. As described above, on October 4, 2018, after Welded completed its work on the Williams/ASR Project, and the same day that Transco received regulatory approval to place the Williams/ASR Project pipeline into service, Transco withheld payment and sued Welded. Thereafter, Transco refused to pay other invoices and amounts due and owing for construction services Welded provided to Transco.

18. On May 3, 2019, Welded filed its *Complaint and Objections to Claims* [Adv. Docket No. 1] pursuant to which Welded seeks, among other things, (i) an award of damages of over $70 million on account of the amounts improperly withheld by Transco, and (ii) an award for additional damages resulting from the Defendants' actions, including damages stemming from

Transco's violations of the Contractor and Subcontractor Payment Act ("**CASPA**"), 73 Pa. Cons. Stat. §§ 501–516, and those relating to Welded's financial injury and lost business opportunities.

19. Since the Williams Adversary Proceeding was commenced, the Debtors, Williams, and Transco (collectively, the "**Parties**") have engaged in dispositive motion practice and briefing. First, the Defendants filed a motion to abstain, transfer, or dismiss (the "**Motion to Dismiss**") [Adv. Docket Nos. 24, 25, 31, 32, 36, 39]. On October 16, 2019, the Motion to Dismiss was denied in part and granted in part [Adv. Docket Nos. 48 & 49]. Specifically, this Court denied Transco's and Williams' request to (i) abstain from hearing the matter and (ii) transfer the case to Oklahoma. This Court also dismissed certain counts of the complaint. Next, Welded filed its motion for partial summary judgment ("**Summary Judgment Motion**") [*see* Adv. Docket Nos. 50, 52, 53, 55, 71, 72, 73, 79, & 86], pursuant to which Welded seeks judgment as a matter of law that CASPA applies to the contract and that certain labor costs and equipment fee amounts are owed to Welded. On December 20, 2019, the parties completed briefing of the Summary Judgment Motion. The Summary Judgment Motion remains pending before the Court and the defendants have requested oral argument [Adv. Docket Nos. 83 & 86].

20. Currently, the Parties are engaged in fact discovery. On October 30, 2019, the Parties served their initial disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure. On January 8, 2020, Welded served its first set of requests for production of documents on each Defendant. On January 17, 2020, Welded served its first set of interrogatories directed to each Defendant. On January 21, 2020, Transco served its first set of requests for discovery directed to Welded. On February 25, 2020, Welded served its second request for production of documents directed to Transco. Since January 2020, the Parties have conferred on several occasions regarding

electronic discovery, and anticipate producing documents to each other on a rolling basis through the end of March 2020.

ii. Adversary Proceedings Commenced Against the Debtors

21. In addition to the adversary proceedings identified above, the Debtors agreed to limited relief from the automatic stay (the "**Automatic Stay**") of section 362 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "**Bankruptcy Code**") to permit certain defendants to bring actions to enforce mechanic's lien rights and to name Welded Construction, L.P. ("**Welded**") as a nominal defendant in such actions. Following discussions with its customer, Columbia Gas, the Debtors agreed to such limited relief because (a) under West Virginia law, the general contractor of a construction project is a necessary party to a lien enforcement action and (b) the Debtors are not the owner of the real property securing the alleged mechanic's liens. This gave rise to a procedural conundrum: a mechanic's lien action against the relevant property owner—Columbia Gas—was required to be brought within a six-month period following the filing of a notice of mechanic's lien; however, vendors and subcontractors could not name Welded—a necessary party to such action—without relief from the automatic stay. Given that the real property at issue is not property of Welded's estates, allowing limited relief from the Automatic Stay was a practical solution that would obviate prejudice to its subcontractors and vendors and Columbia Gas, while minimizing cost to the Debtors' estates.

22. Over the past nine months, several vendors and/or subcontractors filed actions in state court in West Virginia to enforce mechanic's liens against Columbia Gas and, in most cases, Welded. Several actions were dismissed in state court. Columbia Gas has removed the remaining actions to federal court, and each action has been transferred to the District Court of Delaware. Of the actions transferred to the District Court of Delaware, seven actions—brought by four plaintiffs—remain pending. The Debtors have supervised these actions and gauged their level of

participation on several factors including efficiency, an evaluation of the merits of the claims, whether related claims have been filed in the Chapter 11 Cases, and other strategic considerations.

II. Status Report

A. The Chapter 11 Cases

Status: The Debtors anticipate filing a chapter 11 plan prior to the Status Conference.

Dates/Deadlines:

Date	Action/Deadline
March 16, 2020	Deadline to file a chapter 11 plan within the exclusivity period [Docket No. 1175]
March 31, 2020 at 10:00 a.m. (ET)	Omnibus hearing
May 18, 2020	• Deadline to solicit acceptance of a chapter 11 plan [Docket No. 1175] • Deadline to remove actions to federal court [Docket No. 1204]

B. The Adversary Proceedings

i. *Welded Construction, L.P. v. Sunoco Pipeline L.P.*,
Adv. Pro. No. 18-50928 (KG)

Status: Resolved.

ii. *Welded Construction, L.P. v. Prime NDT Services, Inc.*,
Adv. Pro. No. 19-50180 (CSS)

Status: The Debtors have submitted the *Debtors' Motion, Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019, for an Order Approving and Authorizing the Settlement Agreement By and Between the Debtors and Prime* [Adv. Docket No. 123], which is scheduled to be heard at the omnibus hearing scheduled on March 31, 2020 at 10:00 a.m. (ET).

iii. *Welded Construction, L.P. v. The Williams Companies, Inc.*,
Adv. Pro. No 19-50194 (CSS)

Status: The parties are actively engaged in discovery.

Dates/Deadlines:

Date	Action/Deadline
January 3, 2020	*Notice of Completion of Briefing* [Adv. Docket No. 86] filed for the Summary Judgment Motion
March 30, 2020	The close of "Fact Discovery" (excluding depositions)
June 29, 2020	• Conduct fact witness depositions • Disclose expert witnesses pursuant to Rule 26(a)(2)
August 17, 2020	Provide responsive expert witness disclosures
September 4, 2020	Conduct expert witness depositions
September 22, 2020	• File/serve dispositive motions • Objections to expert testimony based on *Daubert v. Merrell Dow Pharm., Inc.*
TBD	Mediation
TBD	Trial

iv. *Earth Pipeline Services, Inc. v. Columbia Gas Transmission, LLC,* Adv. Pro. Nos. 19-50274 (CSS), 19-50275 (CSS)

Status: On July 15, 2020, the case was transferred from the United States District Court for the Northern District of West Virginia to the United States District Court for the District of Delaware. Thereafter, the case was referred to this Court. On October 30, 2019, the parties submitted a status report indicating that the parties had engaged in settlement discussions and were prepared to commence discovery.

v. *Schmid Pipeline Construction, Inc. v. Columbia Gas Transmission, LLC,* Adv. Pro. No. 19-50886 (CSS)

Status: On November 21, 2019, the case was transferred from the United States District Court for the Northern District of West Virginia to the United States District Court for the District of Delaware. Thereafter, the case was referred to this Court. On February 5, 2020, the parties submitted a proposed discovery plan and a detailed case overview [Adv. Docket No. 10].

Dates/Deadlines:

Date	Action/Deadline
March 13, 2020	Deadline for Amendment of Pleadings and Joinder of Parties

June 15, 2020	Deadline to Designate Experts and Produce Expert Reports in Support of Affirmative Claims and/or Affirmative Defenses
August 15, 2020	Deadline to Designate Rebuttal Experts and Produce Rebuttal Expert Reports
October 15, 2020	Complete Discovery
November 15, 2020	File Dispositive Motions
6 weeks prior to trial	File Motions in Limine and all *Daubert* and *Kumho* Motions Challenging Expert Witnesses
2 weeks prior to trial	Serve Pretrial Disclosures (witness and exhibit lists, deposition designations)
1 week prior to trial	• File Joint Final Pretrial Conference Order • Final Pretrial Conference
February 1, 2021	Ready for Trial

vi. *Sunbelt Tractor & Equipment Co. v. Columbia Gas Transmission, LLC,* Adv. Pro. Nos. 20-50446 (CSS), 20-50448 (CSS)

Status: On February 3, 2020, the cases were transferred from the United States District Court for the Northern District of West Virginia to the United States District Court for the District of Delaware. Thereafter, the case was referred to this Court. On February 28, 2020, Sunbelt Tractor & Equipment Co. filed a status report [Adv. Docket No. 9] indicating that the parties were involved in settlement discussions and requesting additional time before setting a discovery schedule.

vii. *Sunbelt Equipment Marketing, Inc. v. Columbia Gas Transmission, LLC,* Adv. Pro. No. 20-50445 (CSS), 20-50447 (CSS)

Status: On February 3, 2020, the cases were transferred from the United States District Court for the Northern District of West Virginia to the United States District Court for the District of Delaware. Thereafter, the case was referred to this Court.

viii. *CADD Enterprises, L.L.C. v. Columbia Gas Transmission, LLC* Adv. Pro. Nos. 19-50887 (CSS), 19-50888 (CSS), 19-50889 (CSS), 19-50890 (CSS)

Status: On November 21, 2019, the cases were transferred from the United

States District Court for the Northern District of West Virginia to the United States District Court for the District of Delaware. Thereafter, the case was referred to this Court. These matters have been resolved, resulting in a release of liens and the CADD claims stemming from the Columbia Gas Project against the Debtors' estates.

Dated: March 2, 2020
Wilmington, Delaware

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