Docket #0008 Date Filed: 12/23/2020

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)
EARTH PIPELINE SERVICES, INC., Plaintiff, v. COLUMBIA GAS TRANSMISSION, LLC, WELDED CONSTRUCTION, L.P., Defendants.	 Adv. Pro. No. 19-50274 (CSS) Adv. Pro. No. 19-50275 (CSS) (Consolidated)
WELDED CONSTRUCTION, L.P., Plaintiff, v. EARTH PIPELINE SERVICES, INC. Defendants.	 Adv. Proc. No. 20-50612 (CSS) (Consolidated) **Ref. Docket Nos. 13, 18, 19, 22, 23, 28, 29, 36, 40, 41, 42, 49 & ____**

AMENDED SCHEDULING ORDER

Welded Construction, L.P. ("Welded"), Earth Pipeline Services, Inc. ("Earth"), and Columbia Gas Transmission, LLC, ("CGT" and together with Welded and Earth, the "Parties"), hereby submit this Amended Scheduling Order, and in support thereof, state as follows:

A. On October 22, 2018, Welded filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. On or about March 8, 2019, Earth filed a complaint against CGT in the

[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.

Circuit Court of Wetzel County, West Virginia, designated as Civil Action No. 19-C-15 (the "Wetzel County Case"). On May 14, 2019, the Wetzel County Case was removed to this Court and redesignated as Adversary Proceeding Number 19-50274.

B. On or about March 8, 2019, Earth filed a complaint against CGT and Welded in the Circuit Court of Marshall County, West Virginia, designated as Civil Action No. 19-C-38 (the "Marshall County Case"). On May 14, 2019, the Marshall County Case was removed to this Court and redesignated as Adversary Proceeding Number 19-50275.

C. On May 6, 2020 the Court entered the *Scheduling Order* [Adv. Docket No. 18] (the "Scheduling Order"), setting discovery, mediation, and pre-trial deadlines, among other things.

D. On May 13, 2020, Earth filed its *Amended Complaint for Limited Purpose to Join Welded Construction, L.P. as Additional Defendant* [Adv. Docket No. 13], joining Welded to the consolidated Adversary Proceedings as a nominal defendant in Earth's lien claims against CGT (the "Lien Claim Adversary Proceedings"), pursuant to paragraph 2 of the Scheduling Order.

E. On May 20, 2020, Earth filed its *Amended Complaint* (the "Amended Complaint") [Adv. Docket No. 23], adding claims only against CGT in the Lien Claim Adversary Proceedings, pursuant to paragraph 3 of the Scheduling Order.

F. On May 27, 2020, Welded commenced an action against Earth by filing its *Complaint and Objection to Proof of Claim Number 592 Filed by Earth Pipeline Services, Inc.* [Adv. 20-50612 Docket No. 1], alleging breach of contract, avoidable transfers, and setoff, and objecting to proof of claim against Earth (the "Welded Adversary Proceeding").

G. Pursuant to paragraph 4 of the Scheduling Order, the Lien Claim Adversary Proceedings and the Welded Adversary Proceeding were consolidated for all purposes into Adv. Proc. No. 19-50274 (the "Adversary Proceeding"). Earth did not oppose this consolidation.

H. On June 3, 2020, CGT filed its *Motion to Dismiss Earth Pipeline Services, Inc.'s Amended Complaint* [Adv. Docket No. 28], seeking to dismiss Earth's claims in the Amended Complaint.

I. On June 4, 2020, Welded filed *Welded's Answer to Amended Complaint in the Lien Adversary Actions* [Adv. Docket No. 29].

J. On June 19, 2020, pursuant to Federal Rule of Civil Procedure 26(f) and paragraph 6 of the Scheduling Order, Welded, Earth, and CGT participated in a discovery conference on June 19, 2020 [Adv. Docket No. 19].

K. On June 26, 2020, Earth filed the *Answer of Earth Pipeline Services, Inc. to the Complaint and Objection to Proof of Claim Number 592* [Adv. 20-50612 Docket No. 4].

L. That same day, Earth also filed *Plaintiff Earth Pipeline Services, Inc.'s Response and Brief in Opposition to Defendant Columbia Gas Transmission's Motion to Dismiss Plaintiff Earth Pipeline Services, Inc.'s Amended Complaint* [Adv. Docket. No. 36].

M. On July 13, 2020, CGT filed *Columbia Gas Transmission, LLC's Reply in Support of its Motion to Dismiss* [Adv. Docket No. 42].

N. On September 4, 2020, pursuant to paragraph 9 of the Scheduling Order, the Parties filed a *Joint Stipulation Regarding Appointment of a Mediator* (the "Mediator Stipulation") [Adv. Docket No. 49], stipulating to the appointment of James S. Green, Sr., Esquire, as mediator.

O. On December 1, 2020, the Court entered the *Order* granting the CGT Motion to Dismiss [Adv. Docket No. 52], dismissing with prejudice Count 1 and without prejudice Counts 2 and 3 of the Amended Complaint. The Court granted Earth leave to file a second amended complaint.

P. Pursuant to the Scheduling Order, the above-captioned cases were consolidated into this Adversary Proceeding. Further, Welded, Earth, and CGT participated in a Fed.R.Civ.P. 26 discovery conference, filed Initial Disclosures [Adv. Docket Nos. 40, 41], and filed the Mediator Stipulation.

Q. Subsequent to the Mediator Stipulation, the agreed-upon mediator, Mr. Green, passed away. As a result, the Parties are in discussion regarding the appointment of a replacement mediator.

R. Given the need for a Replacement Mediator, as well as several discovery and scheduling considerations, the parties agreed to extend certain discovery deadlines, and proposed this, the Amended Scheduling Order.

NOW, THEREFORE, the Parties hereby request that the Court approve the following Amended Scheduling Order governing discovery, mediation, and related matters in the Adversary Proceeding:

1. All fact discovery shall be completed by a date no later than June 2, 2021.[2]

2. The Parties shall provide expert reports for any issue on which they bear the burden of proof by a date no later than July 2, 2021. The parties shall provide rebuttal expert reports by a date no later than August 2, 2021. All reports shall provide the information required by Fed.R.Civ.P. 26(a)(2)(B). All expert discovery shall be completed, and discovery closed, by a date no later than September 1, 2021.

3. No later than one hundred twenty (120) days after the date of this Amended Scheduling Order, the parties shall file a Stipulation Regarding Appointment of a Replacement

[2] All time periods set forth in this Amended Scheduling Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

Mediator or a statement that the parties cannot agree on a replacement mediator and a request that the Court select and appoint a replacement mediator to the proceeding. Within sixty (60) days after the entry of an Order Assigning the Adversary Proceeding to Mediation, 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.

4. All dispositive motions shall be filed and served by a date no later than fifteen (15) days after the close of all discovery and shall be subject to Rule 7.1.2 of the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware.

5. The parties shall comply with the General Order Governing Pre-Trial Procedures in Adversary Proceedings Set for Trial Before Judge Christopher S. Sontchi. The parties shall file, no later than three (3) business days prior to the earlier of the date set for (i) pre-trial conference (if one is scheduled) or (ii) trial, a joint pre-trial memorandum approved by all counsel and shall contemporaneously deliver two (2) copies thereof to Judge Sontchi's chambers.

6. The Order Assigning the Adversary Proceeding to Mediation shall set the Adversary Proceeding for trial. The Court may, in its discretion, schedule a pre-trial conference in lieu of or in addition to the trial.

7. Earth shall have twenty-one (21) days after the date of this Amended Scheduling Order to file a second amended complaint. CGT will have fourteen (14) days from Earth's second amended complaint to move, answer, or otherwise respond to the second amended complaint. If CGT files a motion to dismiss Earth's second amended complaint, Earth will have fourteen (14) days to respond. CGT will then have seven (7) days from Earth's response to the motion to dismiss to file its reply.

8. The Plaintiff shall immediately notify Chambers upon the settlement, dismissal or other resolution of the Adversary Proceeding subject to this Amended Scheduling Order and shall file with the Court appropriate evidence of such resolution as soon thereafter as is feasible. The Parties shall file a status report forty-five (45) days after the date of this Amended Scheduling Order, each forty-five (45) days thereafter, and thirty (30), twenty (20), and ten (10) days prior to trial, setting out the status of the Adversary Proceeding. The Parties shall immediately advise Chambers, in writing, of any occurrence or circumstance, which the Parties believe may suggest or necessitate the adjournment or other modification of the trial setting.

9. Deadlines contained in this Amended Scheduling Order may be extended only by the Court and only upon written motion for good cause shown.

10. Earth shall serve this Amended Scheduling Order on each Defendant within five (5) business days after the entry of this Order.

Dated: December 23rd, 2020
Wilmington, Delaware

CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE