UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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

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(Proceedings commenced at 10:01 a.m.)

(Call to Order of the Court)

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

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

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

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

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

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

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

confidential.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. GUERKE: Thank you, Your Honor.

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

THE COURT: Okay.

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

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

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

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

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

THE COURT: Okay.

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

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

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

THE COURT: Okay.

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

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

THE COURT: I don't want duplicative exhibits.

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay.

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

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

MR. GUERKE: Thank you, Your Honor.

THE COURT: Thank you.

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

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

THE COURT: Okay.

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

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

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

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

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

MS. EWALD: I understand, Your Honor.

And one of the questions I had with regard to the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. EWALD: Thank you, Your Honor.

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

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

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

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

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

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

THE COURT: Okay.

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

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

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

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

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

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

THE COURT: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: For me to do.

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

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

MS. EWALD: And Your Honor --

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

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

THE COURT: Okay. Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Good morning.

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

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

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

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

THE COURT: That's fine.

MR. MURLEY: Thank you, Your Honor.

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

THE COURT: Okay.

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

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

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

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

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

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

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

THE COURT: Yes.

(Pause)

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

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

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

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

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

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

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

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

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

MR. NEIBURG: Your Honor, may I – sorry, Michael Neiburg from Young Conaway.

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

THE COURT: That's fine.

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

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

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

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

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

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

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

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

MR. GUERKE: Yes, Your Honor.

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

MR. GUERKE: Correct, Your Honor.

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

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

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

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

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

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

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

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

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

THE COURT: Yes.

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

THE COURT: Yes.

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

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

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

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

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

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

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

THE COURT: The amendment.

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

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

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

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

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

THE COURT: I'll take it.

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

THE COURT: Just the stipulation.

MR. GUERKE: May I approach, Your Honor?

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

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

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

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

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

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

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

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

MR. GUERKE: Thank you, Your Honor.

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

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

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

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

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

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

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

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

THE COURT: Okay. Thank you.

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

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

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

Okay. Anything else?

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

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

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

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

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

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

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

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

MR. GUERKE: Thank you, Your Honor.

THE COURT: Anything else?

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

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

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

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

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

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

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

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

MR. GUERKE: No, Your Honor.

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

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

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

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