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March 3, 2025

VIA CM/ECF
The Honorable Laurie S. Silverstein
United States Bankruptcy Judge
United States Bankruptcy Court
for the District of Delaware
824 North Market Street, 6th Floor
Wilmington, DE 19801

Re. Welded Construction L.P. v. The Williams Companies, Inc., Williams Partners Operating LLC, and Transcontinental Gas Pipe Line Company, LLC
Adv. Pro. No. 19-50194 (LSS)

Dear Judge Silverstein:

This letter brief is submitted with the enclosed proposed Judgment Order in response to the Court's Opinion dated February 4, 2025 [D.I. 442] (the "Opinion") in the adversary proceeding between Transcontinental Gas Pipe Line Company, LLC ("Transco") and Welded Construction LP ("Welded"). Pursuant to the Court's request, the Parties have exchanged proposed judgment orders corresponding to the Opinion but have been unable to settle certain components. Specifically, the Parties disagree regarding the continuing application of the prejudgment interest and penalty interest the Court awarded pursuant to 73 Pa. Cons. Stat. §§ 501 *et seq*. ("CASPA") after the entry of judgment in federal court. Further, Welded's proposed Judgment Order would improperly impose CASPA penalties and interest even after any payment of the principal amount of the proposed judgment and through payment of interest, penalties and attorneys' fees. Transco respectfully requests that the Court enter the enclosed proposed Judgment Order and find that the federal post judgment interest rate of 28 U.S.C. § 1961 applies to the judgment rather than the CASPA interest and penalty interest.

As detailed herein, the CASPA prejudgment interest ceases to run upon entry of judgment, following which 28 U.S.C. § 1961 governs post judgment interest. Pursuant to the *Erie* doctrine, federal courts sitting in diversity jurisdiction, including bankruptcy courts presiding over an adversary proceeding, shall apply state law for substantive issues and federal law for procedural issues. *See Erie R. Co. v. Tompkins*, 304 U.S. 64, 78, 92 (1938); *In re Poli*, 298 B.R. 557, 565 (Bankr. E.D. Va. 2003) ("Under *Erie* and its progeny, choice of law rules require the bankruptcy court to make a distinction between substantive and procedural law."). The award of post judgment interest is procedural in nature and thus decided by federal law, specifically, 28 U.S.C. § 1961(a). *See In re Cardelucci*, 285 F.3d 1231, 1235 (9th Cir. 2002); *Pierce Assoc. v. Nemours Found.*, 865 F.2d 530, 548 (3d Cir. 1988); *Rhino Servs., LLC v. DeAngelo Contracting Servs., LLC*, No. CV

21-3840, 2023 WL 5186254, at *7 (E.D. Pa. Aug. 11, 2023) (stating ". . . post-judgment interest is governed by 28 U.S.C. § 1961 rather than by state law."); *D&D Underground Utilities Inc. v. Walter Martin Excavating Inc.*, No. CV 12-241-GFVT, 2015 WL 13427765, at *19 (E.D. Ky. Sept. 30, 2015) (holding that plaintiff was entitled to recover prejudgment interest on a prompt payment claim at the state statutory rate up to the date of judgment and post judgment interest, if applicable, as prescribed in 28 U.S.C. § 1961(a)); *see also AECOM Tech. Servs., Inc. v. Flatiron | AECOM, LLC*, No. 19-CV-2811-WJM-KAS, 2024 WL 3834158, at *5 (D. Colo. Aug. 15, 2024) (amending final judgment to reflect that post judgment interest is governed by 28 U.S.C. § 1961 instead of the state statute).

The United States Court of Appeals for the Third Circuit has confirmed that, on the merits of post judgment interest, federal district courts must apply 28 U.S.C. § 1961 rather than state law; whereas prejudgment interest is a substantive matter in which applicable state law applies. *See Travelers Cas. & Sur. Co. v. Ins. Co. of N. Am.*, 609 F.3d 143, 157 (3d Cir. 2010) (concluding that prejudgment interest in contract actions under Pennsylvania state law is a substantive rather than procedural matter; and post judgment interest is determined by 28 U.S.C. § 1961(a)); *see also Pierce Assocs.*, 865 F.2d 530, at 548 ("[Post judgment interest] is governed by 28 U.S.C. § 1961 notwithstanding that this is a diversity action."); *Polymer Dynamics, Inc. v. Bayer Corp.*, 341 F. App'x 771, 773 (3d Cir. 2009); *Catena v. NVR, Inc.*, No. 2:20-CV-00160-MJH, 2023 WL 128744, at *6 (W.D. Pa. Jan. 9, 2023).

A bankruptcy court is a "unit of the district court," and "therefore, 28 U.S.C. § 1961(a) applies to bankruptcy court judgments." *In re Keefe*, 401 B.R. 520, 526 (B.A.P. 1st Cir. 2009) (". . . federal law governs the rate of post judgment interest on a federal court judgment even in an action otherwise governed by state law."); *In re Poli*, 298 B.R. 557, 563 (Bankr. E.D. Va. 2003) ("Because postjudgment interest is procedural rather than substantive law, the federal judgment rate as set forth in 28 U.S.C. § 1961 applies to postjudgment interest awards in the bankruptcy context."); *In re S. Indus. Banking Corp.,* 87 B.R. 518, 520 (Bankr. E.D. Tenn. 1988) ("Section 1961 applies in adversary proceedings in the bankruptcy courts.").

Thus, any interest that shall accrue on the judgment against Transco after entry of a judgment order can only apply pursuant to federal law, not state law. When the Court enters the judgment order corresponding to the Opinion, interest under CASPA (substantive state law) shall cease to run and post judgment interest shall begin to accrue on the judgment at the rate specified in 28 U.S.C. § 1961(a).[1] This aligns with *C.J. Hughes Constr. Co. Inc. v. EQM Gathering OPCO, LLC*, No. CV 18-00168-WSS, 2023 WL 11956877, at *1 (W.D. Pa. Jan. 11, 2023), wherein the

[1] Post judgment interest shall not apply to an award of attorneys' fees and expenses to Welded until a sum-certain judgment for those categories of damages is entered accordingly. *See Eaves v. Cnty. of Cape May*, 239 F.3d 527, 530, 542 (3d Cir. 2001) ("[W]e hold that pursuant to 28 U.S.C. § 1961(a), post-judgment interest on an attorney's fee award runs from the date that the District Court enters a judgment quantifying the amount of fees owed to the prevailing party rather than the date that the Court finds that the party is entitled to recover fees, if those determinations are made separately."); *see also Skretvedt v. E.I. Dupont De Nemours*, 372 F.3d 193, 217 (3d Cir. 2004).

Court found that the federal post judgment interest rate of § 1961 shall apply following entry of an award of damages pursuant to CASPA in federal court.[2]

Further, this should apply to both prejudgment interest AND penalty interest under CASPA. *See, e.g.*, *Kinworthy v. Soo Line R. Co.*, 860 N.W.2d 355, 360 (Minn. 2015) ("Therefore, under federal law postjudgment interest is calculated from the date of entry of judgment and all interest prior to the entry of judgment is necessarily prejudgment interest.") (emphasis added).

Other federal courts have concluded that prejudgment interest and interest penalties imposed by a state prompt payment statute terminate at entry of judgment and are supplanted by post judgment interest under § 1961(a). For instance, in *Safeco Ins. Co. of Am. v. Cnty. of San Bernardino*, the court held that prevailing plaintiffs were entitled to prejudgment interest at state law rates while post judgment interest was determined by federal law and reasoned that the same logic should apply to a state statute's penalty provision. No. EDCV05194VAPOPX, 2007 WL 9719176, at *2–3 (C.D. Cal. May 22, 2007), *aff'd*, 347 F. App'x 315 (9th Cir. 2009). Thus, the court held that the plaintiff was not entitled to a 2% per month penalty outlined in the state statute for wrongfully held retention after the date of judgment. *Id.* at *3. *See also In Cox Operating, L.L.C. v. St. Paul Surplus Lines Ins. Co*, No. CIV.A. H-07-2724, 2014 WL 109397, at *4 (S.D. Tex. Jan. 10, 2014), *aff'd*, 795 F.3d 496 (5th Cir. 2015) (declining to apply penalty against insurer under Texas Prompt Payment of Claims Act after judgment was rendered).

While Pennsylvania state courts have imposed CASPA penalties and interest following entry of judgment based upon a "liberal construction" of the statute, *see Zimmerman v. Harrisburg Fudd I, L.P.*, 984 A.2d 497, n. 8 (Pa. 2009), such imposition is not applicable in federal court and is contrary to the plain language of CASPA, which indicates that the penalty interest ceases to accrue upon award. Specifically the statute states "If [] litigation is commenced to recover payment due under this act and it is determined that an owner [] has failed to comply with the payment terms of this act, the [] court shall award, in addition to all other damages due, a penalty equal to 1% per month of the amount that was wrongfully withheld." 73 Pa. Cons. Stat. § 512(a)(1). This statute does not provide that the penalty interest shall continue to accrue until payment is made. *C.f. New Design Constr. Co. v. Hamon Contractors, Inc.*, 215 P.3d 1172, 1184–85 (Colo. App. 2008) (finding the CO prompt payment act interest penalty continued to accrue because the legislature expressly provided for it: "the interest shall accrue for the period from the required payment date to the date on which payment is made").

For these reasons Transco respectfully requests that the Court enter the enclosed proposed Judgment Order applying the federal post judgment interest rate governed by 28 U.S.C. § 1961 to the judgment against Transco, and that CASPA prejudgment interest and penalty interest shall cease to accrue upon the entry of the enclosed Judgment Order.

[2] The court in *C.J. Hughes Constr. Co. Inc. v. EQM Gathering Opco, LLC*, No. 2:18-CV-168, 2022 WL 18581023, at *9 (W.D. Pa. Nov. 21, 2022), *aff'd*, No. 22-3391, 2024 WL 1652341 (3d Cir. 2024) noted that state prejudgment interest (later corrected to the federal post judgment interest rate following entry of judgment) and penalty interest continued to run until the judgment was paid; however, the Court did not perform any analysis or give any consideration to the effect of the federal statute, Section 1961, on the penalty interest imposed by CASPA.

Respectfully submitted,

SAUL EWING LLP

By:/s/ Lucian B. Murley
Lucian B. Murley (DE Bar No. 4892)

-and-

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Enclosure
cc: Michael S. Neiburg, Counsel for Welded Construction, L.P. (via CM/ECF)
Sean M. Beach, Counsel for Welded Construction, L.P. (via CM/ECF)
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
WELDED CONSTRUCTION, L.P., *et al.*,	)	Case No. 18-12378 (LSS)
Debtors.	)	Jointly Administered
WELDED CONSTRUCTION, L.P.,	)	
Plaintiff,	)	
v.	)	Adv. Pro. No. 19-50194 (LSS)
THE WILLIAMS COMPANIES, INC., WILLIAMS PARTNERS OPERATING LLC, and TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC,	)	
Defendants.	)	**Re: Docket No. 442**

FINAL JUDGMENT

WHEREAS, the above-captioned adversary proceeding (the "Adversary Proceeding") came on for a bench trial before this Court with respect to the claims and counterclaims between Welded Construction, L.P. ("Welded") and Transcontinental Gas Pipe Line Company, LLC ("Transco");

WHEREAS, the Court rendered its Opinion [Adv. Docket No. 442] (the "Opinion") on February 4, 2025, which constitutes the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure;

WHEREAS, the Court held in favor of Welded and against Transco on certain of Welded's claims against Transco; and

WHEREAS, the Court held in favor of Transco and against Welded on certain of Welded's claims;

IT IS HEREBY ORDERED, ADJUDGED, and DECREED, as stated in the Opinion, that:

1. Judgment is entered in favor of Welded and against Transco in the principal amount of $44,632,308 plus interest, interest penalties, attorneys' fees and expenses as set forth herein.

2. Welded is awarded 1% simple interest per month (prorated for any fraction of a month) and 1% penalty interest per month (prorated for any fraction of a month) on $39,582,308 of the principal amount of $44,632,308 from April 13, 2019, pursuant to 73 Pa. Cons. Stat. §§ 505, 512, until the date that this Judgment Order is entered.

3. Welded is awarded post-judgment interest on $5,050,000 of the principal amount of $44,632,308 from the date of entry of this Judgment Order. Interest on this amount shall be subject to and calculated in accordance with 28 U.S.C.A. § 1961.

4. The Judgment in Welded's favor is $100,047,539.20 as of February 13, 2025, with interest and interest penalties continuing to accrue on the principal amount of $39,582,308 as set forth above until the date that this Judgment Order is entered.

5. Post-judgment interest shall begin to accrue on the date of entry of this Judgment Order, except for any amounts submitted pursuant to Paragraph 6 below, which shall not be subject to post-judgment interest until a separate judgment order is entered. All post-judgment interest shall be subject to and calculated in accordance with 28 U.S.C. § 1961.

6. Welded shall make a submission regarding its attorney's fees and expenses no later than forty-five (45) days from the date of entry of this Judgment Order. Transco shall have fourteen (14) days from the date Welded's submission is filed with the Court to file an objection to Welded's submission. Welded shall have seven (7) days from the date Transco's objection is filed with the Court to file a reply.

7. All of Transco's claims and counterclaims against Welded, including Transco's (i) *Motion for Order Directing Welded Construction, L.P. to Comply with the Court's Orders Approving Commitment Letters* [Case No. 18-12378-LSS, Docket No. 836], and (ii) *Request for Adequate Protection* [Case No. 18-12378-LSS, Docket No. 837], regarding Transco's Request for Payment of Administrative Expense (assigned claim number 775) filed on April 26, 2019, as well as Transco's proofs of claim numbers 632 and 636, are hereby fully resolved and satisfied for the reasons set forth in the Opinion.

8. The Court enters this Judgment in favor of Welded and against Transco in this Adversary Proceeding for the reasons set forth in the Court's Opinion. The Clerk of the Court is hereby directed to enter judgment on a final basis as set forth in this Judgment pursuant to Federal Rule of Civil Procedure 54(b) because there is no just reason for delay of entry of final judgment against Transco in this matter. All of Welded's existing claims against Transco and all of Transco's claims against Welded have been finally adjudicated by the Court's Opinion, with the exception of quantification of the award of Welded's attorneys' fees and expenses, which will be addressed by the Court as set forth in Paragraph 6 of this Judgment. The delay of entry of final judgment until the adjudication of Welded's complaint against The Williams Companies, Inc. and William Partners Operating LLC by a jury trial would prejudice the creditors of the Debtor's estate.