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March 3, 2025

VIA ECF & EMAIL

The Honorable Laurie Selber Silverstein
United States Bankruptcy Court
824 N. Market Street, 6th Floor
Wilmington, DE 19801

Re: Welded Construction, L.P. v. The Williams Companies, Inc., *et al*., Adv. Pro. No. 19-50194 (LSS) – Welded Letter Brief in Support of Proposed Judgment Order

Dear Judge Silverstein:

Welded Construction, L.P. ("Welded") writes to (i) address the dispute between Welded and Transcontinental Gas Pipe Line Company ("Transco") with respect to the Court-requested proposed form of judgment order and (ii) submit Welded's proposed judgment order (the "Judgment" attached here as **Exhibit A**) consistent with the Court's Opinion [Adv. D.I. 442].

I. The parties have met and conferred regarding a proposed form of judgment order.

The parties have reached agreement on nearly every aspect of the proposed form of judgment order, including the calculation of principal, interest, and penalties under 73 Pa. Cons. Stat. §§ 501 *et seq.* ("CASPA") from April 13, 2019, through and including the entry of judgment.[1] The parties agree that the judgment provides for Welded's attorneys' fees and expenses as the substantially prevailing party and have agreed upon the briefing schedule regarding fees.[2] The parties also agree that the Court's judgment will be a final judgment pursuant to Federal Rule of Civil Procedure 54(b) and that the entry of judgment operates as a final adjudication (except with respect to the quantification of Welded's award of attorneys' fees and expenses) of (i) all of Welded's existing claims against Transco and (ii) all of Transco's existing claims against Welded.

II. Transco disputes the post-judgment interest and penalties under CASPA.

The parties dispute only whether the Court's entry of judgment cuts off Welded's right to CASPA interest and penalties. Consistent with the Opinion and prevailing law, CASPA continues to apply until the Judgment is satisfied in full. Transco suggests that the Court meant

[1] Without knowing when the Court will enter judgment, Welded's proposed Judgment states, by way of example, that the judgment amount is $100,047,539.20 as of February 13, 2025, which was 70 months from April 13, 2019.

[2] Section 512(b) of CASPA entitles Welded to seek additional, post-judgment attorneys' fees incurred in its efforts to collect on the Judgment. *See Zimmerman v. Harrisburg Fudd I, L.P.*, 984 A.2d 497, 505 (Pa. Super. 2009).

for CASPA interest and penalties to stop once the Court enters judgment and, and that point, for Welded to receive *only* post-judgment interest under 28 U.S.C. § 1961. This is an entirely new argument that Transco cannot properly raise now,[3] and it is an erroneous and tortured reading of the Opinion. Welded has not been able to identify any cases where § 1961 trumped CASPA.

In the same section of the Opinion where the Court provides its finding with respect to CASPA, the Court properly held that "[i]nterest should begin to run from April 13, 2019 on all but the Final Payment. As for the Final Payment, interest should begin to run from the date of judgment." Op. at 163. The Court further properly held that "Welded may recover a penalty equal to 1% per month from April 13, 2019." Op. at 167.[4] Consistent with CASPA and prevailing law, the Court did not identify a cutoff date or otherwise limit the application of CASPA's interest and penalty provisions. Doing so would have been inconsistent with the language and purpose of the statute.

III. CASPA is a remedial statute.

CASPA is remedial in nature—a "prompt payment statute" that "protect[s] contractors and subcontractors in 'major construction projects.'" Op. at 161. It is "not a substitute for a traditional breach of contract action; rather, it makes additional remedies available to an unpaid contractor." Op. at 161. As the Court held, "[f]ailure to timely pay invoices results in interest of 1% per month." Op. at 162. And "[i]f a contractor is forced to pursue litigation or arbitration against an owner, the owner is liable for a penalty equal to 1% per month of the amount that was wrongfully withheld." Op. at 162 (internal quotation marks omitted).

Courts recognize that CASPA interest and penalties continue to accrue until the judgment is paid. In the *Zimmerman* case, for instance, the Pennsylvania Superior Court reversed the trial court and held that CASPA interest "continues post-award at the statutory rate until payment."[5] The *Zimmerman* court also held that, absent a finding that the owner's withholding was proper, "the trial court abused its discretion when it did not award the statutory penalty for the *post-award* period . . . ."[6] As the *Zimmerman* court explained, CASPA is an exception to Pennsylvania Judicial Code section 8101—Pennsylvania's statute regarding interest on judgments.[7] Section 8101 provides in pertinent part "[e]xcept as otherwise provided by another statute, a judgment for a specific sum of money shall bear interest at the lawful rate . . . ."[8] "CASPA, however, *clearly mandates the inception and continuation of statutory interest post default until payment*, and therefore qualifies as an exception to section 8101."[9] "Because CASPA is a remedial statute, we must accord it a liberal construction 'to effect [its] objects and to promote justice.'"[10]

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[3] *Cf.* Op. at 141 ("[C]ourts have held that a party's failure to include claims in the final pretrial order precludes that party from raising the claim at trial.").

[4] The Court carved out the Final Invoice ($5,050,000) from the 1% penalty award. Op. at 164. Accordingly, Welded shall receive the 1% per month penalty under CASPA on only $39,582,308.

[5] *See Zimmerman*, 984 A.2d at 502; *see also* Op. at 161 n.619 (citing *Zimmerman*).

[6] *Zimmerman*, 984 A.2d at 502–03 (emphasis added).

[7] *Id.* at 502 n.8.

[8] *Id.*

[9] *Id.* (emphasis added).

[10] *Id.*

The Court's Opinion follows this reasoned logic. In discussing the application of CASPA interest and penalties, the Court carves out the Final Invoice, noting that Transco will not be taxed with the 1% CASPA penalty and holding that "interest should begin to run from the date of judgment." Op. at 163. The Court's ruling could not be clearer—CASPA applies beyond the judgment date. Permitting Transco to stop CASPA interest (and penalties) in favor of a lower post-judgment interest rate would entirely undermine the purpose of CASPA and benefit the owner rather than the contractor.

IV. The *C.J. Hughes* case does not advance Transco's position.

Welded understands that Transco looks to *C.J. Hughes Construction Co. v. EQM Gathering OPCO, LLC*, 2023 WL 11956877 (W.D. Pa. Jan. 11, 2023), as support for its position. But Transco's reliance is misplaced. The district court in that case awarded interest under 28 U.S.C. § 1961 because the court had previously held that C.J. Hughes contractually waived its right to interest under CASPA.[11] Because C.J. Hughes was the prevailing party, and because C.J. Hughes waived its right to collect interest under CASPA, the court awarded prejudgment interest at the Pennsylvania rate and post-judgment interest at the federal rate under 28 U.S.C. § 1961. Even though C.J. Hughes waived CASPA interest, the *C.J. Hughes* court expressly ordered that the 1% CASPA penalty rate would continue to accrue as long as C.J. Hughes remained unpaid.[12] Thus, this case undermines, rather than supports, Transco's position that federal courts cease to apply CASPA upon the entry of judgment.

Welded never waived its right to collect interest under CASPA and, to the contrary, provided expert testimony on the calculation of interest and penalties under the statute. Op. at 164. The Court correctly awarded statutory interest and penalties under CASPA and, consistent with applicable caselaw, indicated that the award would continue after the entry of judgment.

Welded thanks the Court in advance for its consideration of this matter. Welded is available at the Court's convenience to discuss the foregoing, the Judgment, or to address any additional questions the Court may have.

Best regards,

/s/ Travis G. Buchanan
Travis G. Buchanan

TGB
Enclosure

cc: All counsel of record via ECF & Email

[11] *See C.J. Hughes Constr. Co. v. EQM Gathering OPCO, LLC*, No. 2:18-cv-168, 2020 WL 3448383, at *14 (W.D. Pa. June 24, 2020); *see also C.J. Hughes Const. Co. v. EQM Gathering Opco, LLC*, No. 2:18-cv-168, 2022 WL 18581023, at *9 n.4 (W.D. Pa. Nov. 21, 2022), *aff'd by C.J. Hughes Constr. Co. v. EQM Gathering OPCO, LLC*, No. 22-3391, 2024 WL 1652341 (3d Cir. Apr. 17, 2024).

[12] *See C.J. Hughes*, 2022 WL 18581023, at *9 n.4 ("[T]he Court finds that C.J. Hughes is entitled to penalties in the amount of $1,934.39 per day for each day after November 16, 2022 . . . that C.J. Hughes remains unpaid."), *aff'd by* 2024 WL 1652341 (3d Cir. Apr. 17, 2024).

EXHIBIT A

(Welded's Proposed Judgment)

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 (LSS)
Debtors.	)	(Jointly Administered)
WELDED CONSTRUCTION, L.P.,	)	
Plaintiff,	)	
vs.	)	Adv. Pro. No. 19-50194 (LSS)
THE WILLIAMS COMPANIES, INC., WILLIAMS PARTNERS OPERATING LLC, and TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC,	)	
Defendants.	)	

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;

[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.

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

WHEREAS, the Court deducted certain amounts from Welded's award as a result of certain of Transco's claims against Welded;

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, 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 per month (prorated for any fraction of a month), pursuant to 73 Pa. Cons. Stat. §§ 501 *et seq.*, on $39,582,308 from April 13, 2019, until the date that the Judgment, interest, penalties, attorneys' fees and expenses are paid in full by, or on behalf of, Transco.

3. Welded is awarded 1% simple interest per month (prorated for any fraction of a month), pursuant to 73 Pa. Cons. Stat. §§ 501 *et seq.*, on $5,050,000 from the date of entry of this Judgment until the date that the Judgment, interest, penalties, attorneys' fees and expenses are paid in full by, or on behalf of, Transco.

4. The Judgment in Welded's favor is $100,047,539.20 as of February 13, 2025, with interest and penalties continuing to accrue as set forth above until the date that the Judgment, interest, penalties, attorneys' fees and expenses are paid in full by, or on behalf of, Transco.

5. Between April 13, 2019, and the date of this Judgment, interest and penalties have accrued at a rate of $791,646.16 per month (prorated for any fraction of a month), and beginning as of the date of entry of this Judgment, interest and penalties shall accrue at a rate of $842,146.16 per month (prorated for any fraction of a month) as set forth below:

a. 1% simple interest on the principal amount of $39,582,308 is $395,823.08 per month (prorated for any fraction of a month) until the date that the Judgment, interest, penalties, attorneys' fees and expenses are paid in full by, or on behalf of, Transco.

b. 1% penalty on the principal amount of $39,582,308 is $395,823.08 per month (prorated for any fraction of a month) until the date that the Judgment, interest, penalties, attorneys' fees and expenses are paid in full by, or on behalf of, Transco.

c. 1% simple interest on the principal amount of $5,050,000 is $50,500 per month (prorated for any fraction of a month) until the date that the Judgment, interest, penalties, attorneys' fees and expenses are paid in full by, or on behalf of, Transco.

6. Pursuant to 73 Pa. Cons. Stat. § 512(b), as the substantially prevailing party, Welded is awarded its attorneys' fees and expenses in this Adversary Proceeding. Welded shall make a submission regarding its attorneys' fees and expenses no later than forty-five (45) days from the date of entry of this Judgment. Transco shall have fourteen (14) days from the date Welded's submission is filed with the Court to file a response. Welded shall have seven (7) days from the date Transco's response 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 Debtors' estate.