

ENTERED

November 22, 2021

Nathan Ochsner, Clerk

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	*	CHAPTER 11
	*	
	*	CASE NO. 19-34698 (DRJ)
	*	
KP ENGINEERING, LP, et al¹	*	
	*	(Jointly Administered)
Debtor	*	

**JOINT STIPULATION AND ORDER FOR ALLOWANCE OF ARCOSA TANK, LLC
f/k/a TRINITY CONTAINER’S PROOF OF CLAIM NUMBER 87**

(Doc. No. 1005)

Michael D. Warner (the “**Liquidation Trustee**”), solely in his capacity as liquidation trustee for the KP Engineering Liquidation Trust (the “**Trust**”) and pursuant to the *Third Amended Joint Chapter 11 Plan of Reorganization of KP Engineering, LP and KP Engineering, LLC*² (the “**Plan**”), confirmed by the Court’s *Order Confirming Third Amended Joint Chapter 11 Plan of Reorganization of KP Engineering, LP and KP Engineering, LLC*³ (the “**Confirmation Order**”), and that certain *Liquidation Trust Agreement* dated June 22, 2020 (the “**Trust Agreement**”), and Arcosa Tank, LLC f/k/a Trinity Container (“**Arcosa**”) (together, the Liquidation Trustee and Arcosa are referred to herein as the “**Parties**”) respectfully submit this proposed stipulation and agreed order (the “**Stipulation and Order**”) resolving the *Liquidation Trustee’s Objection to Claim Pursuant to Section 502(b) of the Bankruptcy Code, Rule 3007 of the Federal Rules of*

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are KP Engineering, LP (7785) and KP Engineering, LLC (0294). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 5555 Old Jacksonville Hwy., Tyler, TX 75703.

² Case Number 19-34698, Doc. No. 575.

³ *Id.*

*Bankruptcy Procedure and the Terms of the Plan Seeking to Disallow and Expunge Claim Number 87 Filed by Arcosa Tank, LLC f/k/a Trinity Container*⁴ (the “**Claim Objection**”) as set forth herein.

RECITALS

WHEREAS, on August 23, 2019 (the “**Petition Date**”), KP Engineering, LP (“**KPE**”) and KP Engineering, LLC (together, the “**Debtors**” and, post-confirmation, the “**Reorganized Debtors**”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas (the “**Court**”).⁵

WHEREAS, KPE was assigned Case Number 19-34698 and KP Engineering, LLC was assigned Case Number 19-34699.⁶ The two bankruptcy cases were subsequently consolidated for procedural purposes only and have since been jointly administered under Case Number 19-34698 (the “**Bankruptcy Case**”).⁷

WHEREAS, also pending before the Court is Adversary Proceeding Number 19-03707 (the “**Johnson Adversary**”), which relates to KPE’s design and construction of a 200MM cf/day gas cryogenic plant for Targa Pipeline Mid-Continent Westtex LLC’s (“**Targa**”) (the “**Johnson Project**”).

WHEREAS, within the Johnson Adversary, Targa interpleaded approximately \$10 million in retainage (the “**Retainage**”) that Targa contended should be distributed among some or all of more than thirty subcontractor third-party defendants who filed lien claims.

WHEREAS, on January 13, 2020, Arcosa filed Proof of Claim Number 87 (the “**Claim**”), according to the records of the Trust’s claims and noticing agent, Omni Agent Solutions (“**Omni**”),

⁴ *Id.* at Dkt. No. 971.

⁵ Case Number 19-34698, Doc. No. 1; Case Number 19-34699, Doc. No. 1.

⁶ *Id.*

⁷ Case Number 19-34698, Doc. No. 39.

and a copy of which is attached hereto as **Exhibit “A”**, therein asserting a secured claim in the amount of \$993,768.20 on the basis of “Goods sold and services performed” related to the Johnson Project, comprised of (1) \$775,085.00 in outstanding invoices (the “**Invoices**”); (2) interest totaling \$139,123.23; (3) attorneys’ fees totaling \$78,782.34; and (4) costs totaling \$777.67.

WHEREAS, on June 12, 2020, the Court entered the Confirmation Order into the record of the Bankruptcy Case.

WHEREAS, pursuant to Article IV(F) of the Plan, the Trust was created and effective on the Effective Date.

WHEREAS, pursuant to the Confirmation Order, the Plan and the Trust Agreement, the Liquidation Trustee was appointed to act as trustee of the Trust.

WHEREAS, on June 23, 2020, the Plan became effective (the “**Effective Date**”). The Liquidation Trustee has since retained Omni’s continued services.

WHEREAS, on June 28, 2020, Arcosa filed that certain *First Tier Claimant Lien Summary* into the record of the Johnson Adversary, therein asserting a \$305,583.75 (total) lien claim against the Retainage.⁸

WHEREAS, on August 17, 2020, the Court entered an order into the record of the Johnson Adversary, *inter alia*, allowing Arcosa a \$305,583.75 lien claim against the Retainage.⁹

WHEREAS, on January 27, 2021, the Court entered an order into the record of the Johnson Adversary, *inter alia*, directing the Clerk to distribute \$125,931.60 to Arcosa from the Retainage (the “**Disbursement Order**”).¹⁰

WHEREAS, Arcosa has received \$126,118.82 pursuant to the Disbursement Order,

⁸ Adversary Proceeding Number 19-03707, Doc. No. 184.

⁹ *Id.* at Doc. No. 240.

¹⁰ *Id.* at Doc. No. 261.

comprised of \$125,931.60 from the Retainage and \$187.22 in interest.

WHEREAS, Arcosa represents and warrants that the entirety of the \$775,085.00 in Invoices remains outstanding and that it has not received any sums, other than those pursuant to the Disbursement Order, in satisfaction of the Invoices to date.

WHEREAS, pursuant to the Plan¹¹ and the Trust Agreement¹², the Liquidation Trustee is authorized to object to the Claim.

WHEREAS, the Liquidation Trustee has identified the Claim as objectionable pursuant to 11 U.S.C. § 502, Federal Rule of Bankruptcy Procedure 3007 and/or the Plan.

WHEREAS, on August 27, 2021, the Liquidation Trustee filed the Claim Objection, therein lodging his objections to the Claim.¹³

WHEREAS, Arcosa's deadline to respond to the Claim Objection was initially September 27, 2021, but such deadline has since been extended by the Parties' stipulation through November 11, 2021.¹⁴

WHEREAS, the Liquidation Trustee and Arcosa agree to enter into the following stipulation to resolve the foregoing issues regarding the Claim Objection.

¹¹ Article VII(A)(2) of the Plan authorizes the Liquidation Trustee, "[e]xcept as otherwise specifically provided in the Plan or the [Trust Agreement]", to, *inter alia*, "with respect to all Claims in Class 3 [Allowed Other Secured Claims], 4 [Allowed Johnson Creditor Claims – exclusive standing], 5 [Allowed Channelview Creditor Claims – exclusive standing], 6 [Allowed Geismar VI Creditor Claims – exclusive standing], and 7 [Allowed General Unsecured Claims – exclusive standing]], . . . file, withdraw, or litigate to judgment, objections to Proofs of Claims."

¹² Article 1, Section 1.2(c) of the Trust Agreement provides that "[o]n the Effective Date, the Liquidation Trust shall stand in the shoes of the Debtors for all purposes with respect to . . . (ii) the claims reconciliation process for Claims in Classes 4, 5, 6 and 7. For clarity, (x) deficiency claims, if any, of holders of Claims in Classes 3, 4, 5 and 6, will be treated as Claims in Class 7, and subject to the Claims objection process provided in Section 6.3 hereof; (y) the Liquidation Trustee shall have no duty or obligation to address distributions on or to, or allowances of the Claims in Class 3 (other than with respect to any deficiency Claim within Class 7), as such duty and obligation shall be undertaken by the Debtors or the Reorganized Debtors, as applicable." Article 3, Section 3.6(d) of the Trust Agreement provides that "[s]ubject to any limitations contained herein, in the Plan, or the Confirmation Order, the Liquidation Trustee shall have the following powers and authorities on behalf of the Liquidation Trust: . . . without the need for [the Court's] approval, to investigate, object to, subordinate, compromise, estimate, allow, settle, or abandon any Claims in Classes 4, 5, 6, and 7."

¹³ Case Number 19-34698, Dkt. No. 971.

¹⁴ Case Number 19-34698, Dkt. Nos. 976, 994.

WHEREAS, by this Stipulation and Order, the Parties hereby agree to the terms set forth below.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED AND UPON APPROVAL BY THE COURT OF THIS STIPULATION, THE FOLLOWING IS SO ORDERED:

1. The Claim is allowed as a Class 7 General Unsecured Claim in the reduced amount of \$668,030.16 (the “*Reduced Claim Amount*”). The Reduced Claim Amount shall be further reduced by any and all additional amounts received by Arcosa in partial or full satisfaction of the Claim, from any source.

2. Arcosa has a continuing obligation until the Trust has been terminated to notify the Liquidation Trustee within ten (10) business days of receipt of any amounts in full or partial satisfaction of the Claim, which amount(s) so received shall further reduce the Reduced Claim Amount. After providing such notice and at the Liquidation Trustee’s request, Arcosa and the Liquidation Trustee shall file a joint Stipulation with the Court as soon as is reasonably practicable reducing the Reduced Claim Amount in the amount(s) received.

3. Omni is authorized and directed to update the claims register maintained in the Bankruptcy Case to reflect the relief granted in this Stipulation and Order.

4. The Liquidation Trustee, Omni, and the Clerk of this Court are authorized to take all actions necessary to effectuate the relief granted in this Stipulation and Order.

5. Notwithstanding closure of the Bankruptcy Case, whether one or both cases of record are closed, the Court shall maintain sole and exclusive jurisdiction and authority to interpret and enforce this Stipulation and Order, and to resolve any and all disputes arising from or related to this Stipulation and Order.

6. The Liquidation Trustee's rights to object, on any basis, to any other claims held by Arcosa are hereby reserved.

7. The terms and conditions of this Stipulation and Order shall be effective and enforceable immediately upon its entry.

8. The Stipulation and Order represents the Parties' mutual understandings with regard to the Claim Objection and supersedes all prior agreements regarding such, whether in oral or written form.

IN WITNESS WHEREOF, and in agreement herewith, the Parties have executed and delivered this Stipulation and Order on the day and year indicated below.

Signed: November 22, 2021.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Signature Page to Follow:

AGREED AS TO FORM AND CONTENT:

Dated: November 9, 2021

/s/ Frances A. Smith
Frances A. Smith, Shareholder
Ross & Smith, PC
Plaza of the Americas
700 N. Pearl Street, Ste. 1610
Dallas, TX 75201
T 214.377.7879 | D 214.593.4976 | F 214.377.9409

**Counsel for Arcosa Tank, LLC f/k/a Trinity
Container**

Dated: November 9, 2021

By: /s/ Brooke W. Altazan

**STEWART ROBBINS BROWN & ALTAZAN,
LLC**

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Baton Rouge, LA 70801-0016
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***Attorneys for Michael D. Warner, Liquidation
Trustee***

United States Bankruptcy Court
Southern District of Texas

In re:
KP Engineering, LP
Official Committee Of Unsecured Creditor
Debtors

Case No. 19-34698-drj
Chapter 11

CERTIFICATE OF NOTICE

District/off: 0541-4
Date Rcvd: Nov 22, 2021

User: ADIuser
Form ID: pdf002

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Total Noticed: 37

The following symbols are used throughout this certificate:

Symbol	Definition
+	Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.
#	Addresses marked '#' were identified by the USPS National Change of Address system as requiring an update. While the notice was still deliverable, the notice recipient was advised to update its address with the court immediately.

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Nov 24, 2021:

Recip ID db/db	Recipient Name and Address
#+	KP Engineering, LP, KP Engineering LLC, 5555 Old Jacksonville Highway, Tyler, TX 75703-3379
aty	+ Cody J Waagner, Breazeale, Sachse & Wilson LLP, One American Place, 23rd Floor, 301 Main St. Baton Rouge, LA 70801-0027
aty	+ Eric Pezoid, Snell & Wilmer LLP, 600 Anton Blvd, Suite 1400, Costa Mesa, CA 92626-7689
aty	+ Foley Gardere/Foley & Lardner LLP, Foley Gardere/Foley Lardner LLP, 1000 Louisiana, Suite 2000, Houston, TX 77002-5018
aty	John T. Andrishok, Breazeale, Sachse & Wilson, LLP, 23rd Floor, One American Place, Baton Rouge, LA 70801
aty	+ Logan C Threadgill, Chambliss, Bahner & Stophel, P.C, 605 Chestnut Street, Suite 1700, Chattanooga, TN 37450-0019
aty	+ Okin Adams LLP, Okin Adams LLP, 1113 Vine St, Suite 240, Houston, TX 77002 UNITED STATES 77002-1044
aty	+ Timothy M Gibbons, Chambliss, Bahner, & Stophel, P.C., 605 Chestnut St Ste 1700, Chattanooga, TN 37450-0019
cr	+ American Express National Bank, c/o Zwicker & Asso, P.O. Box 9043, 80 Minuteman Road, Andover, MA 01810-1008
cr	Apache Industrial Services, Inc., c/o William R. Sudela, Crady Jewett McCulley & Houren LLP, 2727 Allen Parkway, Suite 1700, Houston, TX 77019-2125
cr	+ Arcosa Tank, LLC, Attention: Justin E. Allen, 500 N. Akard St., Suite 400, Dallas, TX 75201-3332
cr	+ BWFS Industries, LLC, c/o Jason M. Medley, Clark Hill Strasburger, 909 Fannin, Suite 2300, Houston, TX 77010-1036
cr	Dealers Electrical Supply Company, P O Box 2676, Waco, Tx 76702-2676
cr	+ Globe, LLC, c/o Kilpatrick Townsend, 700 Louisiana, 43rd Floor, Houston, TX 77002-2700
cr	+ Innovative Industrial Fabricators, LLC, P. O.Box 621, Keithville, LA 71047, UNITED STATES 71047-0621
intp	+ Jackson Walker LLP, c/o Matthew Cavanaugh, 1401 McKinney St, Suite 1900, Houston, TX 77010-1900
intp	+ Navigators Insurance Company, Wilson, Elser, Moskowitz, Edelman &, 901 Main Street, # 4800, Dallas, TX 75202, US 75202-3758
cr	+ Office of UCTS, Dept. of Labor and Industry, Commo, Collections Support Unit, c/o Deb Secrest, 651 Boas Street, Room 925 Harrisburg, PA 17121-0751
cr	+ Parker Hannifin Corporation, c/o Darrell Corzine, PO Box 1311, Odessa, TX 79760-1311
cr	+ Saulsbury Industries, Inc., c/o Bradley Arant Boulton Cummings, LLP, Attn: N. Chris Glenos, One Federal Place, 1819 5th Avenue North Birmingham, AL 35203-2120
cr	+ Smith County, Linebarg Goggan Blair & Sampson, LLP, c/o Elizabeth Weller, 2777 N Stemmons Frwy Ste 1000, Dallas, TX 75207-2328
intp	+ Texas Capital Bank, National Association, c/o Russell W. Mills, Bell Nunnally & Martin LLP, 2323 Ross Avenue, Suite 1900, Dallas, TX 75201-2721
cr	Texas Comptroller of Public Accounts, E. Stuart Phillips, P.O. Box 12548, Austin, TX 78711-2548
cr	Texas Comptroller of Public Accounts, c/o Office of the Attorney General, Bankruptcy - Collections Division MC-008, PO Box 12548, Austin, tx 78711-2548
cr	+ The Reynolds Company, Attn LaVonda Harrison, Credit Director, 12900 Senlac Drive, Farmers Branch, TX 75234-9232
cr	Tyler Independent School District, c/o Tab Beall, Perdue Brandon Fielder Collins & Mott, PO Box 2007, Tyler, TX 75710-2007
cr	+ Vessel Technology, P. O. Box 6570, Longview, TX 75608, UNITED STATES 75608-6570

TOTAL: 27

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI). Electronic transmission is in Eastern Standard Time.

Recip ID	Notice Type: Email Address	Date/Time	Recipient Name and Address
cr	+ Email/Text: beanland@mssattorneys.com	Nov 22 2021 19:56:00	Consolidated Electrical Distributors, Inc., c/o Misti L. Beanland, Matthews, Shiels, Knott, LLP, 8131 LBJ Freeway, Suite 700, Dallas, TX 75251-1352
cr	+ Email/Text: amberjames@wtlaw.com	Nov 22 2021 19:56:00	Crume Sales, Inc., c/o Amber James, AmberJames, PLLC, 1316 5th Avenue, Fort Worth, TX 76104-4318
cr	Email/PDF: resurgentbknofications@resurgent.com		

District/off: 0541-4

User: ADIuser

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Date Rcvd: Nov 22, 2021

Form ID: pdf002

Total Noticed: 37

		Nov 22 2021 19:55:37	Dell Financial Services LLC, c/o Resurgent Capital Services, PO Box 10390, Greenville, SC 29603-0390
cr	+ Email/Text: houston_bankruptcy@LGBS.com	Nov 22 2021 19:56:00	Harris County, Linebarger Goggan Blair & Sampson LLP, c/o Tara L. Grundemeier, P.O. Box 3064, Houston, TX 77253-3064
cr	+ Email/Text: ipfscollectionsreferrals@ipfs.com	Nov 22 2021 19:56:00	IPFS Corporation, 30 Montgomery Street, Suite 501, Jersey City, NJ 07302-3821
cr	+ Email/Text: amberjames@wtlaw.com	Nov 22 2021 19:56:00	LCM Industries, Inc., c/o Amber James, AmberJames, PLLC, 1316 5th Avenue, Fort Worth, TX 76104, UNITED STATES 76104-4318
cr	Email/Text: LDRBankruptcy.EBN@la.gov	Nov 22 2021 19:56:00	Louisiana Department of Revenue, Bankruptcy Section, P. O. Box 66658, Baton Rouge, LA 70896-6658
cr	+ Email/Text: rachel@morseelectricinc.com	Nov 22 2021 19:56:00	Morse Electric, Inc., P.O. Box 611, Muskogee, OK 74402-0611
cr	Email/Text: lwickham@smithandloveless.com	Nov 22 2021 19:56:00	Smith & Loveless, Inc., 14040 Santa Fe Trail, Lenexa, KS 66215
intp	+ Email/Text: ddeems@theclarogroup.com	Nov 22 2021 19:56:00	The Claro Group, LLC, c/o Douglas J. Brickley, 711 Louisiana Street, Suite 2100, Houston, TX 77002-2746

TOTAL: 10

BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, *duplicate of an address listed above, *P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

Recip ID	Bypass Reason	Name and Address
aty		Foley & Lardner LLP
tr		Michael D. Warner
fa		Alvarez & Marsal North America, LLC
cr		BTS Enterprises, Inc.
cr		Bounds Construction II, LLC
cr		Bowman Specialized Services
intp		Brandon Steele
cr		CPC Pumps International, Inc.
cr		Cajun Constructors, Inc.
cr		CalTech Software Systems, Inc.
cr		Canon Financial Services Inc, Amar A Agrawal
cr		Crawford Electric Supply Company, Inc.
intp		Doug Schnittker
cr		Euler Hermes agent for DNOW, LP
cr		Flowserve US Inc.
cr		Genesis Technical Staffing, Inc.
cr		Gregg Industrial Insulators, Inc.
cr		Hancock Mechanical, LLC d/b/a Hancock Mechanical W
cr		Heatec, Inc
cr		ISC Constructors, L.L.C.
blank		Instrumentation Commissioning Group, LLC
blank		Ken Baxter
intp		Kyle McCoy
cr		MarkWest Ohio Fractionation Company LLC
cr		Official Committee Of Unsecured Creditors
cr		Ohio Department of Taxation
cr		Pierce Construction and Maintenance Co., Inc.
cr		ROWC Energy Services
blank		Ric Steele
cr		S&S Services, LLC
cr		Sefton Steel, LP
cr		Smith County

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cr	TII Logistics, Inc.
intp	Targa Channelview LLC
intp	Targa Pipeline Mid-Continent WestTex LLC
cr	The Dow Chemical Company
intp	Tony Freeman
cr	United States of America
intp	William Preston
cr	Zeeco, Inc., c/o Munsch Hardt Kopf & Harr, P.C., 700 Milam St., Suite 2700, Houston

TOTAL: 40 Undeliverable, 0 Duplicate, 0 Out of date forwarding address

NOTICE CERTIFICATION

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Nov 24, 2021

Signature: /s/Joseph Speetjens