



**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

WELSPUN TUBULAR LLC, §  
§  
Plaintiff, § C.A. No. \_\_\_\_\_ [CCLD]  
§  
v. §  
§  
SCS CARBON TRANSPORT LLC §  
D/B/A SUMMIT CARBON §  
SOLUTIONS, §  
Defendant. §

**COMPLAINT**

Welspun Tubular LLC (“Welspun Tubular”) files this Complaint against SCS Carbon Transport LLC d/b/a Summit Carbon Solutions (“Summit Carbon”).

**STATEMENT OF THE CASE**

1. Summit Carbon is developing a project to capture carbon dioxide from the fermentation process of biorefineries in Iowa, North Dakota, South Dakota, Minnesota, and Nebraska and then transport that carbon dioxide to North Dakota for injection into underground geological formations. For the pipelines required to transport the carbon dioxide from the biorefineries to the injection sites in North Dakota, Summit stated that it would “only utilize highly rated materials including the use of American-made high strength carbon steel that is designed to more than accommodate the anticipated pressure of the material moving through the pipeline,” and selected Welspun Tubular to manufacture 4,142,185 feet of pipe for \$182.5 million.

2. The Purchase Agreement provided that production of the pipe would commence on May 8, 2023, but allowed Summit Carbon to delay the commencement of production for up to six months, which it did while it tried to obtain project permits in North Dakota, South Dakota, and Iowa, the states in which construction was set to begin. After the contractually agreed-upon suspension period expired, Summit requested an indefinite suspension period, which Welspun Tubular declined. Summit then refused to purchase the pipe as required by the Purchase Agreement, and Welspun gave notice of material default. In an effort to avoid the contractual remedies for failure to perform its obligations, Summit then cancelled the Purchase Agreement. Welspun files this lawsuit to hold Summit to its bargain, which includes payment for the materials purchased to manufacture the pipe and a contractually mandated cancellation charge of \$15,000,000.

#### **PARTIES**

3. Welspun Tubular LLC is a limited liability company formed under the laws of the state of Delaware with its principal place of business at 9301 Frazier Pike, Little Rock, Arkansas 72206. Welspun Tubular manufactures line pipe using both the high frequency induction welding and helical submerged arc welding processes.

4. SCS Carbon Transport LLC d/b/a Summit Carbon Solutions is a limited liability company formed under the laws of the state of Delaware with its principal

place of business at 2321 North Loop Drive #221, Ames, Iowa 50010. Summit Carbon is developing a carbon dioxide capture and storage project in the Midwestern United States.

### **JURISDICTION AND VENUE**

5. This court has subject matter jurisdiction over this dispute pursuant to Del. Const. art. IV, § 7, 10 *Del. C.* § 541. This matter is designated to be heard in the Complex Commercial Litigation Division because the amount in controversy exceeds \$1 million.

6. This Court has personal jurisdiction over Summit Carbon pursuant to 6 *Del. C.* § 18-105 because it is a Delaware limited liability company. Venue in this court is proper for the same reason. Although the Purchase Agreement provides for the exclusive jurisdiction “of the federal courts located in the Borough of Manhattan, State of New York,” federal courts do not have subject matter jurisdiction over this dispute in the absence of diversity jurisdiction.

### **FACTS**

7. Summit Carbon and Welspun Tubular entered a Purchase Agreement dated as of September 16, 2022, under which Summit agreed to purchase and Welspun agreed to manufacture \$182.5 million of steel pipe according to Summit’s custom specifications. The Purchase Agreement provided that production of the pipe would commence on May 8, 2023. To prepare for production of the pipe,

Welspun purchased hot rolled steel coils conforming to the specifications required by Summit.

8. Summit Carbon was contractually allowed to suspend the Purchase Agreement for up to six months. If during the suspension period Welspun Tubular received a third-party offer to produce pipe that would fill the spot in its production line reserved for Summit, Welspun was required to notify Summit of the offer and “the duration of offered use of the production line.” Summit then had two options: instruct Welspun to “reject the Third Party Offer and resume production” of Summit’s pipe, or “continue the period of suspension (whereupon [Welspun] may accept such Third Party Offer during the period of suspension).”

9. The Purchase Agreement further allowed Summit Carbon to “cancel this Purchase Agreement, in whole or in part, without cause, at any time,” and that in the event of cancellation, Welspun Tubular would be entitled to recover a cancellation charge of ten percent of the price of the cancelled pipe up to a maximum cancellation charge of \$15,000,000, provided the cancellation occurred after the pipe was scheduled to commence manufacture. Further, Welspun would be entitled to recover the price of materials purchased to manufacture the cancelled pipe, less the net salvage value of the materials.

10. Summit Carbon notified Welspun Tubular on January 31, 2023, that it was suspending the Purchase Agreement, and stated that “[w]e look forward to discussing with you revised dates for the Production Schedule.”

11. During the suspension period, Welspun Tubular consistently gave notice to Summit Carbon when it received third-party offers to produce pipe that would fill the spot in its production line reserved for Summit. On May 11, 2023, Welspun gave Summit notice that it had received a third-party offer to produce pipe from August 28, 2023, to September 8, 2023. Summit responded, “[t]hanks for the notice – You may accept the order.”

12. On June 6, 2023, Welspun Tubular gave Summit Carbon notice that it had received a third-party offer to produce pipe from August 21, 2023, to September 25, 2023. Summit responded, “[n]o issue with Welspun milling this pipe.”

13. On August 15, 2023, Welspun Tubular gave Summit Carbon notice that it had received a third-party offer to produce pipe “which will fill your reserved spot in our production line during the current suspension period and for one month following end of such period. The pipe will be produced from on or about October 9, 2023, until December 15, 2023.” The production schedule for Summit’s pipe, set to start on May 8, 2023, before suspension, had a maximum suspension of six months, ending on November 8, 2023. Summit did not dispute Welspun’s calculation of the production suspension period and allowed Welspun to accept the

third-party offer, extending the production suspension from the original six-month suspension ending on November 8, 2023, to December 15, 2023. That agreement constituted an amendment to the Purchase Agreement in accordance with Section 17(b) of Exhibit A (General Terms) of the Agreement.

14. On September 28, Welspun Tubular gave Summit Carbon notice that it had received a third-party offer to produce pipe “which will fill your reserved spot in our production line from December 16, 2023, *your currently scheduled production date*, until January 2, 2024.” (emphasis added). Welspun asked Summit “whether you want us to reject the offer and *resume production of your pipe under the Purchase Order on December 16, 2023*, or continue the suspension through January 2, 2024.” (emphasis added). Welspun’s September 28, 2023, offer expressly addressed extending the suspension of production from December 16, 2023, to January 2, 2023, and was accepted by Summit on the same day. That agreement constituted an amendment to the Purchase Agreement in accordance with Section 17(b) of Exhibit A (General Terms) of the Agreement.

15. On December 18, 2023, Welspun Tubular reminded Summit Carbon that the suspension period was set to end on January 2, 2024, and stated that it intended to begin production of the Summit pipe beginning February 5, 2024, a date which factored in the “reasonable time required for [Welspun] to resume production under the Purchase Agreement” after the suspension period ended. In response,

Summit unilaterally stated that it would be “maintaining the suspension.” On December 27, 2023, Welspun notified Summit that it was “not agreeable to extending the suspension beyond the current January 2<sup>nd</sup> date.” Summit asked to discuss the status of the project and those discussions revealed that the project was dramatically off-schedule. Welspun then informed Summit by email on January 25, 2024, that it declined to extend the suspension period further and was ready to begin production on February 5, 2024. Welspun also requested a pre-production meeting so that it could prepare for the start of production. On January 25, 2024, Summit responded, “confirming that we have received your email. We will be in touch after discussing your email with our leadership.”

16. After receiving no further communication from Summit Carbon, Welspun Tubular gave notice on February 13, 2024, that Summit’s failure to purchase the contracted-for pipe following the end of the suspension period was a material breach under the Purchase Agreement, and provided Summit thirty days’ notice to cure its breach.

17. On February 19, 2024, Summit Carbon cancelled the Purchase Agreement. The notice of cancellation stated that “Vendor [Welspun] and SCS [Summit] mutually agreed in writing to extend the suspension until January 2, 2024, pursuant to the notice that you provided to SCS on September 28, 2023, which was accepted by SCS on the same day in writing by email, evidencing collectively an

amendment in accordance with Section 17(b) of Exhibit A (General Terms) of the Agreement. The duration of the suspension was eleven (11) months and the start-of-production dates in the Production Schedule were equitably extended by the same amount of time pursuant to Section 12 of the Agreement. Accordingly, the start of production for Batch 1 is currently April 8, 2024.”

18. Summit Carbon further instructed Welspun Tubular (1) to “be on notice that no cancellation charge is due under Section 13 of the Agreement . . . . because the date of start of production has not yet occurred,” and (2) to “also be on notice” that no direct costs, including the cost of the steel purchased to produce the pipe, are due “[s]ince the Suspension was ordered on January 31, 2023, which date was more than 90 days prior to the first scheduled start-of-production date.”

#### **COUNT 1 (BREACH OF CONTRACT)**

19. Welspun Tubular incorporates the allegations made in paragraphs 1 to 18.

20. The Purchase Agreement is a valid, enforceable contract.

21. Welspun Tubular performed its obligations under the Purchase Agreement or was excused from performing one or more of its obligations due to Summit Carbon’s prior material breach or otherwise.

22. Under Section 13 of the Purchase Agreement, cancellation of the agreement by Summit Carbon entitles Welspun Tubular to recover the price of



materials purchased to manufacture the cancelled pipe, less the net salvage value, as well as a cancellation charge of ten percent of the price of the cancelled pipe up to a maximum cancellation charge of \$15,000,000, provided the cancellation occurred after the pipe was scheduled to commence manufacture. Under the September 28, 2023 amendment to the Purchase Agreement, Welspun and Summit agreed that the production suspension would end on January 2, 2023. On December 18, 2023, Welspun notified Summit that it would begin production on February 5, 2024, a date which factored in the “reasonable time required for [Welspun] to resume production under the Purchase Agreement” after the suspension period ended. Summit’s cancellation on February 19, 2024, therefore occurred fourteen days after production was scheduled to resume.

23. In its February 19, 2024, Notice Of Cancellation, however, Summit Carbon expressly stated that it does not owe any amount for the steel that Welspun Tubular purchased to manufacture the pipe, or the cancellation charge of \$15,000,000. That repudiation of its obligations is a breach of the Purchase Agreement.

24. Welspun Tubular has been damaged by Summit Carbon’s breach in an amount measured by the total of (1) the price of materials purchased to manufacture the cancelled pipe, less the net salvage value, and (2) \$15,000,000. These damages

are a direct, natural, probable, and foreseeable consequence of Summit's breach of the Purchase Agreement.

**COUNT 2 (ANTICIPATORY BREACH OF CONTRACT)**

25. Welspun Tubular incorporates the allegations made in paragraphs 1 to 18.

26. The Purchase Agreement is a valid, enforceable contract.

27. Welspun Tubular performed its obligations under the Purchase Agreement or was excused from performing one or more of its obligations due to Summit Carbon's prior material breach or otherwise.

28. Under section 13 of the Purchase Agreement, cancellation of the agreement by Summit Carbon entitles Welspun Tubular to recover the price of materials purchased to manufacture the cancelled pipe, less the net salvage value, as well as a cancellation charge of ten percent of the price of the cancelled pipe up to a maximum cancellation charge of \$15,000,000, provided the cancellation occurred after the pipe was scheduled to commence manufacture. Under the September 28, 2023, amendment to the Purchase Agreement, Welspun and Summit agreed that the production suspension would end on January 2, 2024. On December 18, 2023 Welspun notified Summit that it would begin production on February 5, 2024, a date which factored in the "reasonable time required for

[Welspun] to resume production under the Purchase Agreement” after the suspension period ended. Summit’s cancellation on February 19, 2024, therefore occurred fourteen days after production was scheduled to resume.

29. In its February 19, 2024, Notice Of Cancellation, however, Summit Carbon expressly states that it does not owe any amount for the steel that Welspun Tubular purchased to manufacture the pipe, or the cancellation charge of \$15,000,000. If this repudiation of its obligations is not a breach in itself, it is an express, absolute, and unequivocal statement of Summit’s intention not to perform its obligations under the Purchase Agreement, and therefore is an anticipatory breach of the Purchase Agreement.

30. Welspun Tubular has been damaged by Summit Carbon’s anticipatory breach in an amount measured by the total of (1) the price of materials purchased to manufacture the cancelled pipe, less the net salvage value, and (2) \$15,000,000. These damages are a direct, natural, probable, and foreseeable consequence of Summit’s breach of the Purchase Agreement.

#### **REQUEST FOR RELIEF**

WHEREFORE, Welspun Tubular respectfully requests that the Court enter judgment in its favor, and against Summit Carbon, as follows:

- (a) Awarding Welspun Tubular compensatory damages including the price of the materials purchased to manufacture the pipe that cannot be reallocated, the cost of storing such materials, and the cancellation charge provided by the Purchase Agreement;

- (b) Awarding Welspun Tubular pre- and post-judgment interest at the highest rate allowed by law;
- (c) Awarding Welspun Tubular all expenses and costs; and
- (d) Awarding Welspun Tubular all other relief to which it is entitled.

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