

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11

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EXIDE TECHNOLOGIES, : Case No. 13-11482

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Debtor.¹ :

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**DEBTOR’S MOTION FOR ENTRY
OF AN ORDER AUTHORIZING THE FILING UNDER SEAL OF
THE PROPOSED DEBTOR-IN-POSSESSION FINANCING FEE LETTER**

Exide Technologies (“Exide” or the “Debtor”) hereby moves (the “Motion”) this Court for entry of an order (the “Order”) under section 107(b)(1) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9018-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “Local Bankruptcy Rules”) authorizing the Debtor to (a) file under seal the Fee Letter, dated as of June 7, 2013 (the “Fee Letter”), by and among Exide, JPMorgan Chase Bank, N.A. (“JPMorgan” or the “DIP Agent”), and J.P. Morgan Securities LLC and (b) directing that the Fee Letter shall remain under seal, confidential, and not be made available to anyone without the consent of the Debtor and the DIP Agent except for (i) the U.S. Trustee and (ii) the advisors to any statutory committee appointed in this case on a strictly confidential and “professionals’ eyes only” basis. In support of the Motion, the Debtor relies upon and incorporates by reference (a) the Declaration of Phillip A. Damaska in Support of

¹ The last four digits of the Debtor’s taxpayer identification number are 2730. The Debtor’s corporate headquarters are located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.

Chapter 11 Petition and First Day Pleadings (the “First Day Declaration”) and (b) the Declaration of Daniel Aronson in Support of Debtor’s Motion for Interim and Final Orders (I) Authorizing Debtor (A) to Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Pre-Petition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364 and (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) (the “DIP Declaration”), both filed with this Court concurrently herewith. In further support of this Motion, the Debtor, by and through its proposed undersigned counsel, respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue of the case and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

3. Pursuant to Local Rule 9013-1(f), the Debtor consents to the entry of a final judgment or order with respect to the Motion if it is determined that Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

BACKGROUND

A. The Chapter 11 Case

4. On the date hereof (the “Petition Date”), the Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”).²

5. The Debtor continues to operate its business and manage its property as debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. To date, no creditors’ committee has been appointed by the United States Trustee. No trustee or examiner has been appointed in the Chapter 11 Case.

B. The Debtor’s Business

7. The Debtor, Exide, which together with its direct and indirect subsidiaries (collectively, the “Company”), has operations in more than 80 countries, is a global leader in stored electrical energy solutions and one of the world’s largest producers and recyclers of lead-acid batteries.

8. The Company’s four global business groups—Transportation Americas, Transportation Europe and Rest of World (“ROW”), Industrial Energy Americas, and Industrial Energy Europe and ROW—provide a comprehensive range of stored electrical energy products and services for industrial and transportation applications. Additional factual background information about the Debtor, including its business operations, its corporate and capital structures, its restructuring efforts, and the events leading to the filing of this chapter 11 case, is

² The Debtor’s predecessor has a chapter 11 case currently pending in this District (Case No. 02-11125) (the “Previous Chapter 11 Case”). The Previous Chapter 11 Case was filed on April 15, 2002, and the Debtor and certain of its U.S. subsidiaries emerged from chapter 11 on May 5, 2004. There is one claim remaining open in the Previous Chapter 11 Case. In addition, there is a pending adversary proceeding in which a settlement agreement to allow a general unsecured, non-priority claim has been approved by this Court, but is awaiting final approval from the state chancery court to become effective. The Debtor will confer with this Court regarding the disposition of the Previous Chapter 11 Case at the appropriate time.

set forth in detail in the First Day Declaration.³ Additional facts specific to the DIP Motion (as defined below) are set forth in the DIP Declaration.

RELIEF REQUESTED

9. Contemporaneously with the filing of this motion, the Debtor has filed a motion seeking authority to enter into a debtor-in-possession financing facility (the “DIP Motion”). In connection with the DIP Facilities (as defined in the DIP Motion), the Debtor has agreed to pay all amounts due under the Fee Letter. The public disclosure of the confidential and proprietary information in the Fee Letter has the potential to harm the DIP Agent’s business and to impair the DIP Agent’s ability to syndicate the DIP Facilities in the future. It is essential that the DIP Agent’s highly sophisticated and proprietary methodology for calculating the various fees remain confidential. Furthermore, public dissemination of this information would jeopardize the Debtor’s ability to obtain postpetition financing because the confidentiality of the Fee Letter is required by the proposed postpetition lenders.

10. Because of these concerns, the Debtor has agreed to keep the specific terms of the Fee Letter confidential. Accordingly, the Debtor respectfully requests the entry of the Order, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b), authorizing the Debtor to file the Fee Letter under seal and directing that the Fee Letter shall remain under seal and confidential and not be made available to anyone without the consent of the Debtor and the DIP Agent or further order from the Court. The Debtor will provide a copy of the Fee Letter, on a confidential basis, to the United States Trustee for the District of Delaware and will provide the Fee Letter, upon request, to counsel and

³ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

financial advisors to any statutory committee appointed in this case on a confidential and “professionals’ eyes only” basis.

BASIS FOR RELIEF

11. Section 105(a) of the Bankruptcy Code codifies the Court’s inherent equitable powers and empowers it to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Moreover, pursuant to section 107(b) of the Bankruptcy Code, the Court may authorize the Debtor to file the Fee Letter under seal by permitting the issuance of orders that protect entities from potential harm that may result from the disclosure of certain confidential information. 11 U.S.C. § 107(b). Specifically, section 107(b) provides, in relevant part, that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may—

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information.

Id.

12. Rule 9018 of the Bankruptcy Rules sets forth the procedures by which a party may obtain a protective order authorizing the filing of a document under seal. Rule 9018 of the Bankruptcy Rules provides, in relevant part, that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information” Fed. R. Bankr. P. 9018.

13. Further, Rule 9018-1(b) of the Local Rules provides, in relevant part, that “[a]ny party who seeks to file documents under seal must file a motion to that effect.” Del. Bankr. L.R. 9018-1(b).

14. Unlike its counterpart in Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to demonstrate “good cause.” See, e.g., Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.), 21 F.3d 24, 28 (2d Cir. 1994) (holding that a license agreement authorizing a licensee “to reproduce, manufacture, distribute, and sell videocassettes” of three films contained confidential commercial information). Rather, if the material sought to be protected satisfies one of the categories identified in section 107(b), “the court is required to protect a requesting interested party and has no discretion to deny the application.” Orion Pictures, 21 F.3d at 27. Moreover, the resulting order should be broad (i.e., “any order which justice requires”). In re Global Crossing, Ltd., 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003); Fed. R. Bankr. P. 9018. Courts are required to provide such protections “generally where open inspection may be used as a vehicle for improper purposes.” Orion Pictures, 21 F.3d at 27. Indeed, the “authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice.” In re Global Crossing Ltd., 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003).

15. Commercial information does not have to rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. See Orion Pictures, 21 F.3d at 28 (finding that section 107(b)(1) creates an exception to the general rule that court records are open to examination by the public and, under this exception, an interested party has to show only that the information it wishes to seal is “confidential and commercial” in nature).

16. Here, the terms of the Fee Letter are the product of extensive, good-faith arm’s length negotiations. Pursuant to the Fee Letter, the Debtor agreed to keep the terms confidential. The Fee Letter contains closely-guarded proprietary and commercial information that is highly

sensitive to the DIP Agent and the Debtor. As such, disclosure of the terms of the Fee Letter would cause substantial harm to the DIP Agent, create an unfair advantage to competitors, and violate the Debtor's agreements with the DIP Agent. The fee and expense reimbursement provisions provided for in the Fee Letter primarily fall into two categories: (i) compensation for credit risk and for the DIP Agent's risks in underwriting and/or backstopping the facility; and (ii) compensation for the large, sophisticated team of credit, financial, marketing, legal, and other experts necessary to assist with structuring and marketing this complex facility. The DIP Agent is a well-established source of bankruptcy financing and the disclosure of certain of its fees and marketing strategies threatens the very core of its business model. The Fee Letter contains detailed proprietary information describing fees to be paid in connection with the DIP Facilities, which information is customarily considered by the DIP Agent, in particular, as well as the finance lending industry, in general, to be highly-sensitive and confidential information not typically disclosed to the public or made available to other competing financial institutions. Given the highly competitive nature of the investment banking and lending industries, it is of the utmost importance that the details of the fee structures and allocations set forth in the Fee Letter be kept confidential so that competitors may not use the information contained therein to gain a strategic advantage in the marketplace. Furthermore, disclosing the market flex terms of the Fee Letter puts great pressure on the ability of the DIP Agent to effectively market and syndicate the DIP Facilities to the marketplace and could increase the aggregate cost of the DIP Facilities to the estates. Accordingly, the Debtor respectfully submits that cause exists to file the Fee Letter under seal.

17. In addition, it is common practice for financial institutions and borrowers to execute letters such as the Fee Letter on a confidential basis. Courts in this district have

authorized the filing of similar confidential financing documents under seal in other chapter 11 cases. See, e.g., In re Nebraska Book Co., Case No. 11-12005 (PJW) (Bankr. D. Del. June 28, 2011), ECF No. 58 (authorizing the debtors to file under seal DIP agreement fee letters but requiring disclosure of the aggregate fees and expenses); In re Smurfit-Stone Container Corp., Case No. 09-10235 (BLS) (Bankr. D. Del. Feb. 14, 2010), ECF No. 4139 (authorizing debtors to file under seal fee letter relating to exit term loan facility); In re Champion Enterprises, Inc., Case No. 09-14019 (KG) (Bankr. D. Del. Nov. 17, 2009), ECF No. 51 (authorizing the filing under seal of letters regarding engagement and fees of lenders relating to DIP financing); In re Pliant Corp., Case No. 09-10443 (MFW) (Bankr. D. Del. June 11, 2009), ECF No. 669 (authorizing the filing under seal of exit financing engagement letter containing confidential commercial information, including fee information); In re Tribune Co., Case No. 08-13141 (KJC) (Bankr. D. Del. Dec. 10, 2008), ECF No. 62 (authorizing the filing under seal of fee letters containing confidential information); In re WCI Communities, Inc., Case No. 08-11643 (KJC) (Bankr. D. Del. Sept. 23, 2008), ECF No. 411 (authorizing the filing under seal of a fee letter executed in connection with a proposed DIP credit facility); In re Portola Packaging, Inc., Case No. 08-12001 (CSS) (Bankr. D. Del. Sept. 22, 2008), ECF No. 135 (authorizing the filing under seal of exit financing letter of intent containing confidential commercial information); In re Federal-Mogul Global Inc., T& N Ltd., Case No. 01-10578 (JKF) (Bankr. D. Del. Oct. 30, 2006) ECF No. 10861 (authorizing the filing of amended DIP facility fee letter under seal).

WAIVER OF ANY APPLICABLE STAY

18. The Debtor also requests that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the

court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtor seeks in the Motion is necessary for the Debtor to operate without interruption and to preserve value for its estate. Accordingly, the Debtor respectfully requests that the Court waive the fourteen day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

NOTICE

19. Notice of the Motion will be given to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) counsel to the agent under the proposed debtor in possession financing; (iv) counsel to the agent for the Debtor’s prepetition secured lenders; (v) the indenture trustee for each of the Debtor’s secured and unsecured outstanding bond issuances; (vi) counsel to the unofficial committee of senior secured noteholders (vii) the Internal Revenue Service; (viii) the Securities and Exchange Commission; (ix) the parties included on the Debtor’s list of twenty (20) largest unsecured creditors; and (x) all parties entitled to notice pursuant to Local Bankruptcy Rule 9013-1(m). The Debtor submits that no other or further notice need be provided.

NO PRIOR REQUEST

20. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enters an order, substantially in the form annexed hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
June 10, 2013

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Proposed Counsel for Debtor and Debtor in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11

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EXIDE TECHNOLOGIES, : Case No. 13-11482

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Debtor.¹ : **Related Docket No.** ____

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**ORDER AUTHORIZING THE FILING UNDER SEAL OF THE
PROPOSED DEBTOR-IN-POSSESSION FINANCING FEE LETTER**

Upon the motion (the “Motion”),² of the Debtor for entry of an order (the “Order”) under section 107(b)(1) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9018-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “Local Bankruptcy Rules”) authorizing the Debtor to (a) file under seal the Fee Letter, dated as of June 7, 2013 (the “Fee Letter”), by and among Exide, JPMorgan Chase Bank, N.A. (“JPMorgan” or the “DIP Agent”), and J.P. Morgan Securities LLC and (b) directing that the Fee Letter shall remain under seal, confidential, and not be made available to anyone without the consent of the Debtor and the DIP Agent except for (i) the U.S. Trustee and (ii) the advisors to any statutory committee appointed in this case on a strictly confidential and “professionals’ eyes only” basis; and upon the First Day Declaration and the DIP Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a

¹ The last four digits of the Debtor's taxpayer identification number are 2730. The Debtor’s corporate headquarters are located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.

² All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties in interest; and the Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion was appropriate and no other notice need be provided; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted.
2. The Debtor is authorized to file the Fee Letter under seal pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b).
3. The Fee Letter is confidential and shall remain under seal, and shall not be made available to anyone, except that copies of the Fee Letter shall be provided to the Court, the Clerk of the Court, the Office of the United States Trustee for the District of Delaware, and to counsel and financial advisors to any statutory committee appointed in these cases (the "Committee Professionals"), and as further directed by the Court. The Office of the United States Trustee for the District of Delaware shall keep the Fee Letter and the terms thereof strictly confidential and the Committee Professionals shall keep the Fee Letter and the terms thereof strictly confidential and on a "professionals' eyes only" basis.

4. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

5. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

6. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

Dated: Wilmington, Delaware
_____, 2013

UNITED STATES BANKRUPTCY JUDGE