

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 (KJC)

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Debtor.¹ : **Related Docket No. 2436**

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: **Hearing Date: 10/29/14 at 2:00 p.m. (Eastern)**

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**DEBTOR’S MOTION FOR ORDER UNDER BANKRUPTCY CODE
SECTION 107(b), BANKRUPTCY RULE 9018 AND LOCAL BANKRUPTCY
RULE 9018-1 TO FILE AN EXHIBIT TO THE DEBTOR’S OBJECTION TO THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS’
MOTION TO COMPEL UNDER SEAL**

The debtor and debtor in possession in the above-captioned case (“Exide” or “Debtor”) hereby moves (the “Motion”) this Court for entry of an 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 file an exhibit (the “Confidential Exhibit”) to the Debtor’s objection to the Official Committee of Unsecured Creditors’ (the “Committee”) motion to compel production of documents and for related relief (the “Motion to Compel”) under seal. In support of the Motion, the Debtor respectfully states as follows:

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

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code section 107(b)(1), Bankruptcy Rule 9018 and Local Bankruptcy Rule 9018-1.

3. Pursuant to Rule 9013-1(f) of the Local Bankruptcy Rules, the Debtor consents to the entry of a final judgment or order with respect to this 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 June 10, 2013 (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").

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

6. On June 18, 2013, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed the Committee in the Chapter 11 Case pursuant to Bankruptcy Code section 1102. No trustee or examiner has been appointed in the Chapter 11 Case.

RELIEF REQUESTED

7. On October 13, 2014, the Debtor filed the Debtor's Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364 Authorizing the Debtor to Amend the DIP Facilities and the Final DIP Order (Docket No. 2392) (the "DIP Amendment Motion") seeking authority to amend (the "DIP Amendment") the Amended and Restated Credit

Agreement dated as of July 12, 2013 (as amended, supplemented or otherwise modified) and the Final DIP Order (as defined in the DIP Amendment Motion). The hearing on the DIP Amendment Motion is scheduled for October 31, 2014 at 10:00 a.m. (Eastern).

8. In connection with the DIP Amendment Motion, on October 21, 2014, the Committee filed the Motion to Compel (Docket No. 2436). The hearing on the Motion to Compel is scheduled for October 29, 2014 at 2:00 p.m. (Eastern).

9. Concurrently herewith, the Debtor filed the Debtor's Objection to the Official Committee of Unsecured Creditors' Motion to Compel Production of Documents and for Related Relief (the "Objection"). The Confidential Exhibit is described in the Objection as an example of a Board package provided to the Exide Board of Directors addressing the DIP Amendment as well as milestones, asset sales, marketing, sale process and plan of reorganization issues. The Confidential Exhibit is attached to the Objection as Exhibit A.

10. Because the Confidential Exhibit contains highly confidential and commercially sensitive information regarding the relief sought in the DIP Amendment and milestones, assets sales, marketing, sale process and plan of reorganization issues, the Debtor respectfully requests entry of an order pursuant to section 107(b) and Bankruptcy Rule 9018 granting the Debtor leave to file the Confidential Exhibit under seal.

BASIS FOR RELIEF

11. Section 107(b) of the Bankruptcy Code authorizes the Court to issue orders to protect entities from potential harm caused by the disclosure of confidential information. In particular, section 107(b) provides 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. . . .

11 U.S.C. § 107(b)(1).

12. In addition, pursuant to Rule 9018 of the Federal Rules of Bankruptcy

Procedure:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires . . . 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. In granting relief under section 107(b) of the Bankruptcy Code, “[t]he court determines whether the subject documents falls within the provisions § 107(b) and the appropriate remedy if they do.” In re Barney’s, Inc., 201 B.R. 703, 707 (Bankr. S.D.N.Y. 1996). If the documents in question fall within the parameters of section 107(b), “the court is required to protect a requesting interested party and has no discretion to deny the application.” In re Orion Pictures Corp., 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original); see also In re Lomas Fin. Corp., 1991 WL 21231, at *2 (S.D.N.Y. Feb. 11, 1991) (noting the broad scope of the term “commercial information”). Public access to the confidential record should be denied if “closure is essential to preserve higher values and is narrowly tailored to serve that interest.” In re Washington Post Co., 807 F.2d 383, 390 (4th Cir. 1986) (quoting Press-Enterprise I, 464 U.S. 501, 510 (1984)).

14. The Confidential Exhibit contains highly confidential and commercially sensitive information regarding the DIP Amendment and milestones, asset sales, marketing, sale process and plan of reorganization issues. For this reason, as set forth above, the confidentiality of the Confidential Exhibit must be maintained.

15. The Debtor has provided or will provide the Confidential Exhibit to the Court, the Clerk of the Court, the U.S. Trustee, counsel for the Committee, counsel to the DIP

Agent, and counsel for the unofficial committee of certain holders of the 8 5/8% Senior Secured Notes due 2018 (the “Unofficial Noteholder Committee”), on a confidential and “attorneys’/professionals’ eyes only” basis, and as further directed by the Court. Thus, the Debtor believes that in order to protect the interests of the Debtor’s creditors, no further public disclosure of the Confidential Exhibit is necessary. Furthermore, any party or member of the public with a compelling interest in reviewing the Confidential Exhibit may request a further order from this Court. In sum, the relief sought in this Motion is necessary to protect the highly confidential and commercially sensitive information and will not impair the ability of this Court to protect the public interest.

NOTICE

16. Notice of the Motion will be given to: (i) the Office of the United States Trustee; (ii) counsel to the agent under the debtor in possession financing; (iii) counsel to the agent for the Debtor’s prepetition secured lenders; (iv) the indenture trustee for each of the Debtor’s secured and unsecured outstanding bond issuances; (v) counsel to the unofficial committee of senior secured noteholders; (vi) counsel to the Committee; and (vii) all parties entitled to notice pursuant to Bankruptcy Rule 2002. The Debtor submits that no other or further notice need be provided.

NO PRIOR REQUEST

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

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court enter 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
October 28, 2014

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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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 (KJC)

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

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ORDER TO FILE EXHIBIT TO DEBTOR’S OBJECTION TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS’ MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND FOR RELATED RELIEF UNDER SEAL

Upon the motion (the “Motion”)² of the Debtor for an order, under Bankruptcy Code section 107(b)(1), Bankruptcy Rule 9018, and Local Bankruptcy Rule 9018-1, authorizing the Debtor to file the Confidential Exhibit under seal; and the Court having reviewed the Motion; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of the Debtor, its estate, creditors, stakeholders and other parties in interest; and after due deliberation thereon and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED.
2. The Debtor is authorized to file the Confidential Exhibit under seal.

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

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

3. The Confidential Exhibit is confidential and shall remain under seal, and shall not be made available to anyone, except that copies of the Confidential Exhibit shall be provided to the Court, the Clerk of the Court, the U.S. Trustee, counsel for the Committee, counsel to the DIP Agent, and counsel for the Unofficial Noteholder Committee, on a confidential and “attorneys’/professionals’ eyes only” basis, and as further directed by the Court.

4. Any party who receives the Confidential Exhibit in accordance with this Order shall not disclose or otherwise disseminate the Confidential Exhibit, or the information contained therein, to any other person or entity and shall keep the Confidential Exhibit and the information contained therein confidential.

5. This Court retains jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order.

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

Dated: Wilmington, Delaware
_____, 2014

The Honorable Kevin J. Carey
UNITED STATES BANKRUPTCY JUDGE