

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

EXIDE TECHNOLOGIES,¹

Debtor.

Chapter 11

Case No. 13-11482 (KJC)

Hearing Date: December 19, 2017 at 10:00 a.m. (ET)

Obj. Deadline: October 11, 2017 at 4:00 p.m. (ET)

**MOTION TO FILE UNDER SEAL THE
SUPPLEMENTAL MOTION OF PETER KRAVITZ, AS THE
GUC TRUST TRUSTEE OF THE EXIDE CREDITORS' LIQUIDATING
TRUST, FOR ENTRY OF AN ORDER CLARIFYING AND ENFORCING
THE TERMS OF THE CONFIRMATION ORDER, PLAN AND GUC
SETTLEMENT AGREEMENT TO COMPEL THE REORGANIZED DEBTOR
TO COMPLY WITH THE TERMS THEREOF AND RELATED EXHIBITS**

Peter Kravitz, as the GUC Trust Trustee (the "Trustee") of the Exide Creditors' Liquidating Trust (the "GUC Trust"), moves (the "Seal Motion") this Court for entry of an order, pursuant to section 107(b)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 9018-l(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), (i) authorizing the Trustee to file under seal the *Supplemental Motion of Peter Kravitz, as the GUC Trust Trustee of the Exide Creditors' Liquidating Trust, for Entry of an Order Clarifying and Enforcing the Terms of the Confirmation Order, Plan and GUC Settlement Agreement to Compel the Reorganized Debtor to Comply with the Terms Thereof* (the "Motion")² and exhibits attached

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 On July 28, 2017, the Trustee filed the *Motion of Peter Kravitz, as the GUC Trust Trustee of the Exide Creditors' Liquidating Trust, for Entry of an Order Clarifying and Enforcing the Terms of the Confirmation Order, Plan and GUC Settlement Agreement to Compel the Reorganized Debtor to Comply with the Terms Thereof* [Dkt. No. 4807] and corresponding *Motion to Seal* [Dkt. No. 4808]

thereto (the “Exhibits”) and (ii) granting such other and further relief against Exide Technologies (the “Reorganized Debtor” or “Company”) as the Court deems just and proper. In support of the Seal Motion, the Trustee respectfully submits as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On June 10, 2013 (the “Petition Date”), the former debtor and debtor-in-possession (the “Debtor”) commenced this case by filing a petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”). The Debtor continued to operate its business and manage its property as a debtor and a debtor in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

3. On June 18, 2013, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the Official Committee of Unsecured Creditors (the “Creditors’ Committee”) in the Chapter 11 Case pursuant to Bankruptcy Code section 1102. No trustee has been appointed in the Chapter 11 Case.

4. During the bankruptcy proceeding, issues arose among the Debtor, the Creditors’ Committee and the Unofficial Noteholder Committee (the “UNC”). As a result of extensive negotiations and as part of the plan drafting process, the Debtor, the Creditors Committee, and the UNC executed a Term Sheet for Settlement among Company, the UNC and

(the “Original Seal Motion”). For substantially the same reasons expressed in the Original Seal Motion, the Trustee files this Seal Motion.

the Committee, dated January 28, 2015 (the “GUC Settlement Agreement”), which was approved by Order of the Court pursuant to Bankruptcy Rule 9019 on February 4, 2015 (the “Settlement Order”) [Docket No. 3093]. Pursuant to the GUC Settlement Agreement, the parties, agreed to pursue monetization of Company intellectual property through offset or similar transactions (“IP Transactions”). GUC Settlement Agreement, p. 2.

5. On March 27, 2015, the Court entered an order (the “Confirmation Order”) [Docket No. 3423] confirming the Fourth Amended Plan of Reorganization of Exide Technologies (the “Plan”) [Docket No. 3409] and the Plan became effective on April 30, 2015.

6. The Plan incorporates the GUC Settlement Agreement and directs the Reorganized Debtor to “retain the IP Advisor to advise the Reorganized Debtor and the GUC Trust Trustee on identification, structuring and execution of IP Transactions.” Plan § 6.18.

7. Contemporaneous with the filing of the Seal Motion, the Trustee filed the Motion, which seeks an order directing the Reorganized Debtor to take certain actions related to the IP Transactions. The Motion and Exhibits contain information regarding the Reorganized Debtor’s strategic business plans and related, confidential communications with the Reorganized Debtor’s Board of Directors (the “Confidential Information”).

RELIEF REQUESTED

8. In order to prevent the disclosure of the Reorganized Debtor’s Confidential Information, the Trustee requests that the Court enter an order, substantially in the form attached hereto as Exhibit A, pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 authorizing it to file the Motion and Exhibits under seal and directing that the Motion and Exhibits shall remain under seal, confidential, and not made available to anyone, except for (i) the Court, (ii) the U.S. Trustee, (iii) the Reorganized Debtor and its Counsel, and (iv) any person or entities upon joint consent of the Trustee and Reorganized Debtor.

BASIS FOR RELIEF REQUESTED

9. Sections 107(b) and (c) of the Bankruptcy Code provide the Court with the power to issue orders to protect entities from potential harm that may result from the disclosure of confidential information. Section 107(b)(1) of the Bankruptcy Code provides:

On request of a party in interest, the bankruptcy court shall...protect an entity with respect to a trade secret or confidential research, development, or commercial information.

11 U.S.C. § 107(b)(1).

10. Under section 105(a) of the Bankruptcy Code, the Court may “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a).

11. Bankruptcy Rule 9018 defines the procedure by which a party may move for relief under section 107 of the Bankruptcy Code. Specifically, Bankruptcy Rule 9018 provides that “[o]n motion or on its own initiative, with or without notice, the court may make any order which justice requires . . . to protect the estate or an entity in respect of a trade secret or other confidential research, development, or commercial information.” Fed. R. Bankr. P. 9018.

12. A movant is not required to demonstrate “good cause” to file under seal. *See In re Gitto Global Corp.*, 422 F.3d 1, 9 (1st Cir. 2005). If the material sought to be filed under seal falls within one of the categories identified in section 107(b) of the Bankruptcy Code, “the court is required to protect a requesting party and has no discretion to deny the application.” *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994).

13. “Commercial information” is information which would result in “an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *Id.* at 27–28. Moreover, as one bankruptcy court has explained, “the commercial information that is entitled to protection under Bankruptcy Code § 107(b) and Bankruptcy Rule

9018 must be viewed from the practical perspective.” *In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003).

14. The Court should permit the Trustee to file the Motion and Exhibits under seal because they may contain confidential commercial information of the Reorganized Debtor. The Confidential Information relates to the Reorganized Debtor’s intellectual property and business strategy. The disclosure of such information may potentially impact ongoing negotiations and projects and allow competitors to capitalize on the Reorganized Debtor’s intellectual property and business efforts and strategies. Therefore, the Motion and Exhibits should be sealed to, among other things, protect the parties and not unduly advantage competitors.

NOTICE

15. Notice of this Seal Motion will be given to: (a) counsel to the Reorganized Debtor; (b) the U.S. Trustee; and (c) those parties entitled to receive service pursuant to the Plan. The Trustee submits that, under the circumstances, no other or further notice is required.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Trustee respectfully requests that the Court enter an order, substantially in the form of Exhibit A attached hereto, (i) authorizing the Trustee to file the Motion and Exhibits under seal and (ii) granting such other relief as may be just and proper.

Dated: September 19, 2017
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Eric D. Schwartz

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Counsel to Peter Kravitz, as GUC Trust Trustee

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PLEASE TAKE NOTICE that on September 19, 2017, Peter Kravitz of Province Inc., GUC Trust Trustee (as defined in the Plan) of the Exide Creditors' Liquidating Trust (the "GUC Trust"), filed the **Motion to File Under Seal the Supplemental Motion of Peter Kravitz, as the GUC Trust Trustee of the Exide Creditors' Liquidating Trust, for Entry of an Order Clarifying and Enforcing the Terms of the Confirmation Order, Plan and GUC Settlement Agreement and to Compel the Reorganized Debtor to Comply with the Terms Thereof** (the "Motion").

PLEASE TAKE FURTHER NOTICE that any party wishing to oppose the entry of an order approving the Motion must file a response or an objection to the Motion (the "Response") with the Clerk of the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 on or before **October 11, 2017 at 4:00 p.m. (ET) (the "Objection Deadline")**. At the same time, you must serve such Response upon the undersigned counsel for the GUC Trust so as to be received by the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON **DECEMBER 19, 2017 AT 10:00 AM (ET)** BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 5TH FLOOR, COURTROOM #5, WILMINGTON, DELAWARE 19801. ONLY PARTIES WHO HAVE FILED A TIMELY RESPONSE WILL BE HEARD AT THE HEARING.

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