

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

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In re:	:	Chapter 11
	:	
EXIDE TECHNOLOGIES,	:	Case No. 13-11482 (KJC)
	:	
Reorganized Debtor. <sup>1</sup>	:	Hearing Date:
	:	January 9, 2019 at 11:00 a.m. (ET)
	:	Objection Deadline:
	x	December 18, 2018 at 4:00 p.m. (ET)

**MOTION TO FILE UNDER SEAL THE MOTION OF PETER KRAVITZ, AS  
THE TRUSTEE OF THE EXIDE CREDITORS’ LIQUIDATING TRUST FOR  
ENTRY OF AN ORDER PURSUANT TO SECTION 105(a) OF THE  
BANKRUPTCY CODE AND BANKRUPTCY RULE 9019 APPROVING THE  
SETTLEMENT AGREEMENT BETWEEN EXIDE TECHNOLOGIES AND THE  
EXIDE CREDITORS’ LIQUIDATING TRUST**

Peter Kravitz, as the Trustee (the “Trustee”) of the Exide Creditors’ Liquidating Trust (the “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(d) 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 *Motion of Peter Kravitz, as the Trustee of the Exide Creditors’ Liquidating Trust for Entry of an Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019 Approving the Settlement Agreement between Exide Technologies and the Exide Creditors’ Liquidating Trust* (the “Motion”)<sup>2</sup> and the exhibits attached to the Motion (the

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

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

“Exhibits”) and (ii) granting the Trustee such other and further relief 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.

2. Pursuant to Rule 9013-1(f) of the Local Rules, the Trustee consents to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

**BACKGROUND**

3. On June 10, 2013, Exide Technologies filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

4. On February 4, 2015, the Bankruptcy Court entered an order (D.I. 3093) approving the *Term Sheet for Settlement Among Company, the UNC and the Committee* dated January 28, 2015 (D.I. 3093-1) (the “GUC Settlement Agreement”).

5. On March 27, 2015, the Bankruptcy Court entered an order (D.I. 3423) (the “Confirmation Order”) confirming the Fourth Amended Plan of Reorganization of Exide Technologies (D.I. 3409) (the “Plan”), and the Plan became effective on April 30, 2015 (the “Plan Effective Date”).

6. Pursuant to Article VII of the Plan and paragraphs 37-39 of the Confirmation Order, the Trust was formed, and Peter Kravitz was appointed the Trustee of the

Trust pursuant to the terms and conditions of the Exide Creditors' Liquidating Trust Agreement (D.I. 3567-1) (the "GUC Trust Agreement") between Exide Technologies and the Trustee.

7. Subsequently, the Trustee brought GUC Trust Preference Actions against 403 defendants, which have all been fully litigated and from which a total of \$1,997,629.63 was recovered in 207 of those matters, providing the Trust with a total of approximately \$1,096,662.17 of Net Proceeds (net of fees, costs and other expenses) from the monetization of the GUC Trust Preference Actions.

8. The Trust has indicated to Exide Technologies, as the reorganized debtor in the above-captioned chapter 11 case ("Reorganized Exide"), that it believes that Reorganized Exide has not provided "commercially reasonable" support and assistance to the Trust in the Trustee's pursuit of monetizing the GUC Trust Preference Actions as required by Section 3.11(b) of the GUC Trust Agreement (the "Preference Action Dispute"). While the Trustee believes that he has strong arguments in favor of the Trust's position, Reorganized Exide believes it has strong defenses to the Trust's alleged claims; and the results of litigation if the Parties proceed to a hearing on these outstanding disputes are far from certain.

9. Moreover, the Trust has other outstanding disputes with Reorganized Exide related to the Plan and its implementation, including but not limited to the facts set forth in 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* (D.I. 4859) (the "IP Transaction Proceeds Dispute"). Reorganized Exide believes it has strong defenses to the alleged claims, including as set forth in Reorganized Exide's *Response And Objection To 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* (D.I. 4881, 4882). The results of litigation if the Parties proceed to a hearing on these outstanding disputes are far from certain.

10. Contemporaneous with the filing of the Seal Motion, the Trustee filed the Motion, which seeks an order approving the Settlement Agreement reached between Reorganized Exide and the Trust. The Settlement Agreement attached to the Motion contains confidential commercial information.

**RELIEF REQUESTED**

11. In order to prevent the disclosure of the confidential commercial 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) Reorganized Exide and its counsel, and (iv) any person or entities upon joint consent of the Trustee and Reorganized Exide.

**BASIS FOR RELIEF REQUESTED**

12. Section 107(b) requires the Court to protect confidential commercial information from public disclosure. 11 U.S.C. § 107(b) (“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 . . .”). Once the Court determines that an entity is seeking protection of information that falls within one of the categories enumerated in section 107(b) of the Bankruptcy Code, such as confidential commercial information, “the court is

required to protect a requesting interested party and has no discretion to deny the application.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994).

13. Courts have held that protection under section 107(b) of the Bankruptcy Code must be granted if the information sought to be protected is commercial information, and significantly, that commercial information need not rise to the level of a trade secret to be entitled to protection. *Id.* at 28 (finding that the use of the disjunctive in section 107(b)(1) “neither equates ‘trade secret’ with ‘commercial information’ nor requires the latter to reflect the same level of confidentiality as the former”). Further, in contrast with 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.” *Orion Pictures Corp.*, 21 F.3d at 28. Nor does it require a finding of “extraordinary circumstances or compelling need.” *Id.* at 27.

14. Rather, a party seeking the protection of section 107(b) of the Bankruptcy Code need only demonstrate that the information is “confidential” and “commercial” in nature. *Id.* at 27; *see also In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (recognizing that the purpose of Bankruptcy Rule 9018 is to “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury”). Once it is established that the subject information qualifies as “commercial information” under section 107(b)(1), the Bankruptcy Code mandates that this information be protected from disclosure. *See Global Crossing*, 295 B.R. at 725.

15. Sufficient cause exists for the Court to grant the relief requested in this Seal Motion because the Settlement Agreement attached to the Motion contains confidential commercial information of Reorganized Exide including information required to be kept

confidential and filed under seal pursuant to governing confidentiality agreements. The disclosure of such information may potentially impact ongoing negotiations and projects and allow competitors to capitalize on Reorganized Exide's business efforts and strategies. Therefore, the Trustee submits that good cause exists for the Court to grant the relief requested in this Seal Motion.

**NOTICE**

16. Notice of this Seal Motion will be given to: (a) counsel to Reorganized Exide; (b) the U.S. Trustee for the District of Delaware; (c) counsel to the unofficial committee of senior secured noteholders; and (d) those parties requesting notice pursuant to Bankruptcy Rule 2002. 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: Wilmington, Delaware  
December 4, 2018

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

By: /s/ Tamara K. Mann

Eric D. Schwartz (No. 3134)

Robert J. Dehney (No. 3578)

Tamara K. Mann (No. 5643)

Paige N. Topper (No. 6470)

1201 North Market Street, Suite 1600

Wilmington, Delaware 19801

Tel: (302) 658-9200

Fax: (302) 658-3989

- and -

KELLEY DRYE & WARREN LLP  
James S. Carr (admitted *pro hac vice*)  
Dana P. Kane (admitted *pro hac vice*)  
101 Park Avenue  
New York, New York 10178  
Tel: (212) 808-7800  
Fax: (212) 808-7897

*Co-Counsel to Peter Kravitz, the GUC Trust Trustee of  
the Exide Creditors' Liquidating Trust*

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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Reorganized Debtor. <sup>1</sup>	:	Hearing Date:
	:	January 9, 2019 at 11:00 a.m. (ET)
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**NOTICE OF MOTION TO FILE UNDER SEAL THE MOTION OF PETER  
KRAVITZ, AS THE TRUSTEE OF THE EXIDE CREDITORS’ LIQUIDATING  
TRUST FOR ENTRY OF AN ORDER PURSUANT TO SECTION 105(a) OF THE  
BANKRUPTCY CODE AND BANKRUPTCY RULE 9019 APPROVING THE  
SETTLEMENT AGREEMENT BETWEEN EXIDE TECHNOLOGIES AND THE  
EXIDE CREDITORS’ LIQUIDATING TRUST**

PLEASE TAKE NOTICE that on December 4, 2018, Peter Kravitz, as the duly appointed Trustee (the “Trustee”) of the Exide Creditors’ Liquidating Trust filed the **Motion to File Under Seal the Motion of Peter Kravitz, as the Trustee of the Exide Creditors’ Liquidating Trust for Entry of an Order Pursuant to Section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019 Approving the Settlement Agreement Between Exide Technologies and the Exide Creditors’ Liquidating Trust** (the “Motion”).

PLEASE TAKE FURTHER NOTICE that any party wishing to oppose the entry of an order granting the relief requested in the Motion must file a response or objection (“Objection”) if any, to the Motion 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 **December 18, 2018 at 4:00 p.m. (Eastern Time)** (the “Objection Deadline”). At the same time, you must serve such Objection upon the undersigned counsel for the Trustee so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON **JANUARY 9, 2019 AT 11:00 A.M. (EASTERN TIME)** BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 5TH FLOOR, COURTROOM #5, WILMINGTON, DELAWARE 19801.

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





**Exhibit A**

**Proposed Order**

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

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In re:	:	Chapter 11
	:	
EXIDE TECHNOLOGIES,	:	Case No. 13-11482 (KJC)
	:	
Reorganized Debtor. <sup>1</sup>	:	<b>Re: D.I. _____</b>
	:	
	x	

**ORDER GRANTING MOTION TO FILE UNDER SEAL THE MOTION OF  
PETER KRAVITZ, AS THE TRUSTEE OF THE EXIDE CREDITORS'  
LIQUIDATING TRUST FOR ENTRY OF AN ORDER PURSUANT TO SECTION  
105(a) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019  
APPROVING THE SETTLEMENT AGREEMENT BETWEEN EXIDE  
TECHNOLOGIES AND THE EXIDE CREDITORS' LIQUIDATING TRUST**

Upon the motion (the "Seal Motion")<sup>2</sup> of the Trustee for entry of an order (the "Order"), pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(d), authorizing the Trustee to file under seal the Motion and Exhibits; and the Court having determined that the legal and factual bases set forth in the Seal Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Seal Motion is **GRANTED** as set forth herein.
2. Pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1, the Trustee is hereby authorized to file under seal the Motion and Exhibits.

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

<sup>2</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the Seal Motion.

3. The Clerk of the Court is directed to file and maintain the Motion and Exhibits under seal and shall not make them publicly available. The Motion and the Exhibits shall not be unsealed unless and until permitted by further order of this Court.

4. The Trustee is under no further filing obligation with respect to the Motion and Exhibits, *provided, however*, that the Trustee shall make copies of the Motion and Exhibits available only to Reorganized Exide and the U.S. Trustee.

5. The Trustee is authorized to take all actions necessary to effectuate the relief granted herein.

Dated: \_\_\_\_\_, 2018  
Wilmington, Delaware

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THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE