

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

_____)	
In re:)	Chapter 11
)	
HIGHLAND CAPITAL MANAGEMENT,)	Case No. 19-12239 (CSS)
L.P., ¹)	
)	Hearing Date: Nov. 19, 2019, at 12:00 p.m. (ET)
Debtor.)	Obj. Deadline: Nov. 12, 2019, at 4:00 p.m. (ET)
_____)	

**MOTION OF THE OFFICIAL
COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN ORDER
AUTHORIZING FILING UNDER SEAL OF THE OMNIBUS OBJECTION OF THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE DEBTOR’S
(I) MOTION FOR FINAL ORDER AUTHORIZING CONTINUANCE OF THE
EXISTING CASH MANAGEMENT SYSTEM, (II) MOTION TO EMPLOY
AND RETAIN DEVELOPMENT SPECIALISTS, INC. TO PROVIDE A CHIEF
RESTRUCTURING OFFICER, AND (III) PRECAUTIONARY MOTION FOR
APPROVAL OF PROTOCOLS FOR “ORDINARY COURSE” TRANSACTIONS**

The official committee of unsecured creditors (the “Committee”) of Highland Capital Management, L.P. (the “Debtor”), hereby submits this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), pursuant to (i) sections 105(a) and 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), (ii) Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and (iii) Rule 9018-1(b) of the Local Rules of Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing the Committee to file under seal the *Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtor’s (I) Motion for Final Order Authorizing Continuance of the Existing Cash management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols*

¹ The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



for “*Ordinary Course*” Transactions [Docket No. 86] (the “Committee’s Omnibus Objection”).²

In support of this Motion, the Committee respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Committee confirms its consent, pursuant to Local Rule 9013-1(f), to entry of a final order by the Court in connection with this Motion if it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue of this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and other bases for the relief requested herein are sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b).

BACKGROUND

4. On October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”).

5. On October 29, 2019, the Committee was appointed by the United States Trustee for the District of Delaware (the “U.S. Trustee”) pursuant to section 1102 of the Bankruptcy Code [Docket No. 65].

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Committee’s Omnibus Objection.

6. On October 29, the Debtor filed the (I) *Motion of Debtor for Interim and Final Orders Authorizing (A) Continuance of Existing Cash Management System and Brokerage Relationships, (B) Continued Use of the Prime Account, (C) Limited Waiver of Section 345(b) Deposit and Investment Requirements, and (D) Granting Related Relief* [Docket No. 5] (the “Cash Management Motion”), (II) the *Motion of Debtor Pursuant to 11 U.S.C. §§ 105(a) and 363(b) to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, Additional Personnel, and Financial Advisory and Restructuring-Related Services, Nunc Pro Tunc as of the Petition Date* [Docket No. 75] (the “DSI Retention Motion”), and (III) the *Precautionary Motion of the Debtor for Order Approving Protocols for the Debtor to Implement Certain Transactions in the Ordinary Course of Business* [Docket No. 77] (the “Ordinary Course Protocols Motion,” and together with the DSI Retention Motion and the Cash Management Motion, the “Motions”).

7. Contemporaneously herewith, the Committee has filed the Committee’s Omnibus Objection to the Motions, which attaches certain arbitration awards as Exhibits C and D (the “Exhibits”). The Exhibits are subject to a certain protective order that limits their use, and therefore Committee will file a redacted version of the Committee’s Omnibus Objection that omits the Exhibits. With the filing of this Motion, the Debtors have provided the unredacted Committee’s Omnibus Objection to the Debtor and the UST on a confidential basis.

RELIEF REQUESTED

8. By this Motion, the Committee requests entry of the Proposed Order authorizing the Committee to file the Exhibits under seal.

BASIS FOR RELIEF

9. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the authority to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. This section provides in 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; or
- (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b). In addition, 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).

10. Bankruptcy Rule 9018 sets forth the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code, and provides 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.

11. Local Rule 9018-1(d) requires any party which seeks to file documents under seal to file a motion to that effect. Del. Bankr. L.R. 9018-1(d).

12. 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); *Phar-Mor, Inc. v. Defendants Named Under Seal (In re Phar-Mor, Inc.)*, 191 B.R. 675, 679 (Bankr. N.D. Ohio 1995). 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 party and has no discretion to deny the application.” *Orion Pictures*, 21 F.3d at 27; *see also In re Altegrity, Inc.*, No. 15-10226, 2015 WL 10963572, at *3 (Bankr. D. Del. July 6, 2015) (“[I]f it is established that the documents sought to be sealed fall within the enumerated statutory exception, the court *must* grant the requested relief (or such other relief that protects the moving party).” (emphasis added)).

13. Significantly, commercial information need not rise to the level of a trade secret to be entitled to protection. *Altegrity*, 2015 WL 10963572, at *3; *see also Orion*, 21 F.3d 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”). Nor is the term “commercial information” limited to information that will give an entity’s competitors an unfair advantage. *See In re Borders Grp., Inc.*, 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2011). Instead, a party seeking the protection of section 107(b) need only demonstrate that the information is “confidential” and “commercial” in nature. *Orion*, 21 F.3d at 28; *see also Altegrity*, 2015 WL 10963572, at *3.

14. The Committee submits that the Exhibits satisfy one of the categories in section 107(b) of the Bankruptcy Code because they contain non-public, confidential “commercial information” that merits protection under section 107(b).

15. The Committee further submits that cause exists to authorize the Exhibits to be filed under seal because they are subject to a protective order that limits their use.

16. The Committee further submits that filing the Exhibits under seal will not cause undue prejudice to any parties in interest.

17. For the reasons set forth above, the Committee submits that good cause exists for the Court to grant the relief requested herein and that approval of this Motion is necessary and appropriate.

NOTICE

18. Notice of this Motion will be provided to (i) the Debtor, (ii) the U.S. Trustee, and (iii) any parties that have requested notice pursuant to Local Rule 2002-1 as of the date of this Motion. In light of the nature of the relief requested herein, the Committee submits that no other or further notice is necessary.

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CONCLUSION

WHEREFORE, for the reasons set forth herein, the Committee respectfully requests that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, and grant the Committee such other and any further relief as the Court deems just and proper.

Date: November 12, 2019
Wilmington, Delaware

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Unsecured Creditors*

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

Chapter 11

Case No. 19-12239 (CSS)

Hearing Date: Nov. 19, 2019 at 12:00 p.m. (ET)

Objection Deadline: At the hearing

NOTICE OF MOTION

TO: (I) THE DEBTOR, (II) THE U.S. TRUSTEE, AND (III) ANY PARTIES THAT HAVE REQUESTED NOTICE PURSUANT TO LOCAL RULE 2002-1 AS OF THE DATE OF THIS MOTION

PLEASE TAKE NOTICE that the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”) have filed the attached *Motion of the Official Committee of Unsecured Creditors for Entry of an Order Authorizing Filing Under Seal of the Omnibus Objection of the Official Committee of Unsecured Creditors to the Debtor’s (I) Motion for Final Order Authorizing Continuance of the Existing Cash Management System, (II) Motion to Employ and Retain Development Specialists, Inc. to Provide a Chief Restructuring Officer, and (III) Precautionary Motion for Approval of Protocols for “Ordinary Course” Transactions* (the “Motion”).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion be filed on or before **November 19, 2019 at 12:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 North Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of any objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON NOVEMBER 19 2019 AT 12:00 p.m. (ET) BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI, IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 5TH FLOOR, COURTROOM NO. 6, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.

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Date: November 12, 2019
Wilmington, Delaware

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*Proposed Counsel for the Official Committee of
Unsecured Creditors*

EXHIBIT A

Proposed Order

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

In re:)	
)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹)	Case No. 19-12239 (CSS)
)	
Debtor.)	Docket Ref. No. ____

**ORDER AUTHORIZING FILING UNDER SEAL OF THE OMNIBUS OBJECTION
OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE
DEBTOR’S (I) MOTION FOR FINAL ORDER AUTHORIZING CONTINUANCE
OF THE EXISTING CASH MANAGEMENT SYSTEM, (II) MOTION TO
EMPLOY AND RETAIN DEVELOPMENT SPECIALISTS, INC. TO PROVIDE A
CHIEF RESTRUCTURING OFFICER, AND (III) PRECAUTIONARY MOTION
FOR APPROVAL OF PROTOCOLS FOR “ORDINARY COURSE”
TRANSACTIONS**

Upon the motion (the “Motion”)² of the Committee requesting entry of an order (this “Order”), pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b), authorizing the Committee to file the Committee’s Omnibus Objection under seal; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that this Court may issue a final order consistent with Article III of the United States Constitution; and venue of this Motion being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and adequate notice of the Motion having been given; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion and provided for herein is in the best interests of the

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

Debtor, creditors of the Debtor, and other parties in interest; this Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon the record herein, and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.
2. The Committee is authorized to file the unredacted Committee's Omnibus Objection under seal.
3. The unredacted Committee's Omnibus Objection shall not be made available to anyone, except to the Court, the U.S. Trustee, the Debtor, and other parties in interest as may be ordered or otherwise required by the Court, and all parties receiving the unredacted Committee's Omnibus Objection shall maintain its confidentiality and the confidentiality of its subject matter, including in connection with any pleadings filed with this Court.
4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
5. The Committee is authorized and empowered to take all actions necessary to implement the relief granted in this Order.
6. This Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.