

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

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| In re: | : | Chapter 11 |
| | : | |
| WELDED CONSTRUCTION, L.P., <i>et al.</i> , | : | Case No. 18-12378 (LSS) |
| | : | |
| Debtors. ¹ | : | (Jointly Administered) |
| | : | |
| | : | Hearing Date: 7/19/2023 at 10:00 a.m. (ET) |
| | : | Response Deadline: 6/30/2023 at 4:00 p.m. (ET) |

POST-EFFECTIVE DATE DEBTORS’ MOTION TO FILE UNDER SEAL POST-EFFECTIVE DATE DEBTORS’ OBJECTION TO CLAIM NO. 597 PURSUANT TO SECTION 502 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3007

The above-captioned debtors and debtors in possession (together, the “Debtors” and, following the Effective Date, the “Post-Effective Date Debtors”), through Cullen D. Speckhart, solely in her capacity as Plan Administrator, moves for the entry of an order, in substantially the form attached hereto as **Exhibit A** (the “Proposed Order”), authorizing, but not directing, Post-Effective Date Debtors to file under seal *Post-Effective Date Debtors’ Objection to Claim No. 597 Pursuant to Section 502 of the Bankruptcy Code and Bankruptcy Rule 3007* (the “Claim Objection”)² filed contemporaneously herewith.

JURISDICTION

1. The Court has jurisdiction over this matter under 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409, which is where Debtors filed their chapter 11 petition on

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is c/o P.O. Box 470, Perrysburg, OH 43552-0470.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Claim Objection.



October 22, 2018. The statutory basis for the relief requested in this Motion is 11 U.S.C. §§ 105 and 107(b), as complemented by F. R. Bankr. P. 9018 and Local Bankruptcy Rule 9018-1.

BACKGROUND

2. On February 28, 2019, Cleveland Brothers Equipment Co., Inc. (“Claimant”) filed the Disputed Claim [Claim No. 597]. Claimant provided the Debtors with equipment, parts, and services under various agreements in connection with the Debtors’ construction of the Mountaineer Xpress, Leach Xpress, Williams, and Sunoco-ETP pipeline construction projects.

3. To resolve various claims asserted by Claimant, on or around March 29, 2019, the Debtors and Claimant entered into a Settlement Agreement and Mutual Release that “resolve[d] all claims by and between [Claimant] and the Debtors” (“Settlement Agreement”). See D.I. 596, *Certification of Counsel Regarding Proposed Supplemental Order Approving Vendor Agreements and Releases* ¶ 9. On April 1, 2019, the Court entered an order approving the Settlement Agreement. See D.I. 599, *Supplemental Order Approving Vendor Agreements and Releases* ¶ 1.

4. The Settlement Agreement was originally filed under seal pursuant to the Court’s orders authorizing filing under seal (the “Seal Orders”). See D.I. 211, 393, 480.

5. The Seal Orders protect from public disclosure, among other things, non-public confidential or commercially sensitive information and confidential settlement information.

ARGUMENT

6. The Claim Objection contains settlement information which has previously been filed under seal pursuant to the Seal Orders. Accordingly, Post-Effective Date Debtors request that this Court enter an order sealing the unredacted version of the Claim Objection and authorize Post-Effective Date Debtors to file a redacted version. Post-Effective Date Debtors are filing

separately a proposed redacted version of the Claim Objection contemporaneously herewith, redacting portions of the Claim Objection designated confidential under the Seal Orders.

7. Pursuant to § 107(b) of the Bankruptcy Code, a bankruptcy court must 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 as follows:

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. Similarly, § 105(a) codifies the inherent equitable powers of bankruptcy courts and empowers them 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).

8. Federal Rule of Bankruptcy Procedure 9018 states 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[.]” Local Bankruptcy Rule 9018-1(d) states that “[a]ny entity seeking to file a document . . . under seal must file a motion requesting such relief.”

9. If the material sought to be protected satisfies 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.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994); accord *In re Global Crossing, Ltd.*, 295 B.R. 720, 723 n.7 (Bankr. S.D.N.Y. 2003). Put otherwise, section 107(b) of the Bankruptcy Code does not require a party seeking its protections to demonstrate “good cause.” *Orion Pictures*, 21 F.3d at 28. “Courts have supervisory powers over their records and files and may deny access to

those records and files to prevent them from being used for an improper purpose.” *In re Kaiser Aluminum Corp.*, 327 B.R. 554, 560 (D. Del. 2005). 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.” *Global Crossing*, 295 B.R. at 724.

10. “Commercial information”—defined as “information which would result in ‘an unfair advantage to competitors by providing them information as to the commercial operations of the debtor’”—is one category of information within § 107(b)’s scope. *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (quoting *Orion Pictures*, 21 F.3d at 27–28); see *Global Crossing*, 295 B.R. at 725 (holding 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”). Commercial information need not rise to the level of a trade secret to be protected under § 107(b). See *Orion Pictures*, 21 F.3d at 27–28 (holding that § 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).

11. Here, the confidential information consists of, among other things, confidential settlement information. The Settlement Agreement constitutes trade secret and commercially sensitive information that has been protected from disclosure in the Welded chapter 11 cases, thus satisfying one of the categories enumerated in § 107(b), and should likewise be protected from public disclosure in the Claim Objection. This Court has previously concluded that the Settlement Agreement was confidential and should be protected pursuant to the Seal Orders. This information

has not been made public, and its disclosure would prejudice Post-Effective Date Debtors and third parties.

12. Post-Effective Date Debtors respectfully submit that it is appropriate to authorize them to file under seal the confidential information from the Claim Objection because such information is protected from public disclosure under the Seal Orders.

13. Post-Effective Date Debtors have already provided, on a confidential basis, an unredacted version of the Claim Objection to Claimant and the Court, and will so provide to the Office of the United States Trustee upon request.

14. For these reasons, Post-Effective Date Debtors should be authorized to file those redacted portions of the Claim Objection thereto under seal. Post-Effective Date Debtors submit that other parties in interest will not be materially prejudiced because Claim Objection may be reviewed by the Court and the U.S. Trustee.

COMPLIANCE WITH LOCAL RULE 9018-1(D)

15. In accordance with Local Rule 9018-1(d), counsel to Post-Effective Date Debtors and counsel to Claimant have conferred in good faith and reached agreement concerning the information to be redacted from the Claim Objection and remain sealed from public view.

16. Contemporaneously herewith, Post-Effective Date Debtors filed the “Notice of Proposed Redacted Version.”

NOTICE

17. Notice of this Motion to Seal shall be given to (i) the Office of the United States Trustee for the District of Delaware; (ii) all parties who, as of the filing of this Objection, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002; and (iii) Claimant whose Disputed Claim is subject to the Claim Objection. In light of the nature

of the relief requested in this Motion to Seal, Post-Effective Date Debtors submit no other or further notice is necessary.

NO PRIOR REQUEST

18. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, Post-Effective Date Debtors respectfully request that the Court enter the Proposed Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested in this Motion to Seal and granting such other and further relief as is appropriate under the circumstances.

Dated: June 16, 2023
Wilmington, Delaware

BLANK ROME LLP

/s/ Josef W. Mintz
Josef W. Mintz (DE No. 5644)
Lawrence R. Thomas III (DE No. 6935)
1201 Market Street, Suite 800
Wilmington, Delaware 19801
Telephone: (302) 425-6400
Facsimile: (302) 425-6464
E-mail: Josef.Mintz@BlankRome.com
Lorenzo.Thomas@BlankRome.com

-and-

Michael B. Schaedle (*pro hac vice*)
John E. Lucian (*pro hac vice*)
One Logan Square
130 N. 18th Street
Philadelphia, Pennsylvania 19103
Telephone: (215) 569-5500
Facsimile: (215) 569-5555
Email: Mike.Schaedle@BlankRome.com
John.Lucian@BlankRome.com

Counsel to the Post-Effective Date Debtors

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

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| In re: | : | Chapter 11 |
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| WELDED CONSTRUCTION, L.P., <i>et al.</i> , | : | Case No. 18-12378 (LSS) |
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| Debtors. ¹ | : | (Jointly Administered) |
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| | : | Hearing Date: 7/19/2023 at 10:00 a.m. (ET) |
| | : | Objection Deadline: 6/30/2023 at 4:00 p.m. (ET) |

**NOTICE OF POST-EFFECTIVE DATE DEBTORS’ MOTION TO FILE UNDER SEAL
POST-EFFECTIVE DATE DEBTORS’ OBJECTION TO CLAIM NO. 597 PURSUANT
TO SECTION 502 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3007**

PLEASE TAKE NOTICE that on June 16, 2023, the above-captioned debtors and debtors in possession (together, the “Debtors” and, following the Effective Date, the “Post-Effective Date Debtors”), through Cullen D. Speckhart, solely in her capacity as Plan Administrator, filed the *Post-Effective Date Debtors’ Motion to file Under Seal Post-Effective Date Debtors’ Objection to Claim No. 597 Pursuant to Section 502 of the Bankruptcy Code and Bankruptcy Rule 3007* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

Any responses or objections to the Motion must be (i) filed in writing with the Clerk of the Bankruptcy Court, 824 N. Market Street, Third Floor, Wilmington, Delaware 19801, on or before **June 30, 2022 at 4:00 p.m. (prevailing Eastern Time)** (the “Objection Deadline”); and (ii) served on the undersigned counsel to the Post-Effective Date Debtors so as to be received on or before the Objection Deadline.

If a response or objection is timely filed, served and received and is not otherwise resolved, a hearing to consider the relief requested in the Motion and any response or objection thereto will be held before the Honorable Laurie Selber Silverstein, Chief Judge of the United States Bankruptcy Court for the District of Delaware, Sixth Floor, Courtroom 2, 824 N. Market Street, Wilmington, Delaware 19801 on **July 19, 2023 at 10:00 a.m. (prevailing Eastern Time)**.

IF NO OBJECTIONS OR RESPONSES TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Welded Construction, L.P. (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is c/o P.O. Box 470, Perrysburg, OH 43552-0470.

Dated: June 16, 2023
Wilmington, Delaware

BLANK ROME LLP

/s/ Josef W. Mintz

Josef W. Mintz (DE No. 5644)

Lawrence R. Thomas III (DE No. 6935)

1201 Market Street, Suite 800

Wilmington, Delaware 19801

Telephone: (302) 425-6400

Facsimile: (302) 425-6464

E-mail: Josef.Mintz@BlankRome.com

Lorenzo.Thomas@BlankRome.com

-and-

Michael B. Schaedle (*pro hac vice*)

John E. Lucian (*pro hac vice*)

One Logan Square

130 N. 18th Street

Philadelphia, Pennsylvania 19103

Telephone: (215) 569-5500

Facsimile: (215) 569-5555

Email: Mike.Schaedle@BlankRome.com

John.Lucian@BlankRome.com

Counsel to the Post-Effective Date Debtors

EXHIBIT A

Proposed Order

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

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| In re: | : | Chapter 11 |
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| WELDED CONSTRUCTION, L.P., <i>et al.</i> , | : | Case No. 18-12378 (LSS) |
| | : | |
| Debtors. ¹ | : | (Jointly Administered) |
| | : | |
| | : | Re: D.I. ____ |

**ORDER AUTHORIZING POST-EFFECTIVE DATE
DEBTORS TO FILE UNDER SEAL POST-EFFECTIVE
DATE DEBTORS’ OBJECTION TO CLAIM NO. 597 PURSUANT TO
SECTION 502 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 3007**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (together, the “Debtors” and, following the Effective Date, the “Post-Effective Date Debtors”), through Cullen D. Speckhart, solely in her capacity as Plan Administrator, for entry of this Order authorizing, but not directing, Post-Effective Date Debtors to redact confidential information in *Post-Effective Date Debtors’ Objection to Claim No. 597 Pursuant to Section 502 of the Bankruptcy Code and Bankruptcy Rule 3007* (the “Claim Objection”) designated as confidential pursuant to the Seal Orders [D.I. 211, 393, 480]; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 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; and consideration of the Motion and the relief requested therein being a core proceeding in accordance with 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion

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² Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Motion.

being adequate and appropriate under the particular circumstances; and upon the record of all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor's estate, its creditors and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor,

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

1. The Motion is granted. Any objections, whether filed or not, to the relief requested by the Motion are hereby overruled with prejudice.
2. Post-Effective Date Debtors are authorized to redact confidential information in the Claim Objection. Post-Effective Date Debtors shall provide an unredacted version of the Claim Objection and any other applicable filed documents to the Court, Cleveland Brothers Equipment Co., Inc., and the Office of the U.S. Trustee.
3. Post-Effective Date Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
4. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.