

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

In re:	Chapter 11
Welded Construction, L.P., <i>et al.</i> ,	Case No. 18-12378 (LSS)
Debtors. ¹	(Jointly Administered)
Welded Construction, L.P.,	
Plaintiff,	
vs.	Adv. No. 20-50932
Industrial Fabrics, Inc.,	Re: Adv. Docket No. 47
Defendant.	

PLAINTIFF'S MOTION TO FILE UNDER SEAL
PLAINTIFF'S RESPONSE IN OPPOSITION
TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Welded Construction, L.P. ("Plaintiff") moves for the entry of an order, in substantially the form attached hereto as **Exhibit A** (the "Proposed Order"), authorizing, but not directing, Plaintiff to file under seal the *Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment* (the "Response")² and the appendix thereto (the "Appendix") 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 (the "Debtors"), 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).

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the 9019 Motion.



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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 October 20, 2020, Plaintiff commenced this adversary proceeding against Defendant Industrial Fabrics, Inc. (“Defendant”).

3. On March 24, 2022, Defendant filed *Industrial Fabrics, Inc.’s Motion for Summary Judgment* [Adv. D.I. 39].

4. On May 9, 2022, Plaintiff filed the Response and Appendix. [Adv. D.I. 47].

5. Contemporaneously herewith, Plaintiff filed the *Stipulated Confidentiality and Protective Order* [Adv. D.I. 48] (the “Confidentiality Order”), which is pending Court approval.

6. Once approved by the Court, the Confidentiality Order will protect from public disclosure, among other things, non-public discovery information designated “Confidential” in production concerning non-public confidential or commercially sensitive information.

ARGUMENT

7. The Response and Appendix contain confidential information which has been designated as confidential under the Confidentiality Order. Accordingly, Plaintiff requests that this Court enter an order sealing the unredacted version of the Response and Appendix and authorize Plaintiff to file a redacted version. Plaintiff is filing separately a proposed redacted version of the Response and Appendix contemporaneously herewith, redacting portions of the Response and Appendix designated confidential under the Confidentiality Order.

8. 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).

9. 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.”

10. 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.

11. “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).

12. Here, the confidential information consists of construction contracts between Debtor and third parties. The contracts are stamped and/or deemed “confidential” and constitute 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 be protected from public disclosure in the Response and Appendix. This information has not been made public, and its disclosure would prejudice Plaintiff and third parties.

13. Plaintiff respectfully submits that it is appropriate to authorize it to file under seal the confidential information from the Response and Appendix because such information is protected from public disclosure under the Confidentiality Order.

14. Plaintiff has already provided, on a confidential basis, an unredacted version of the Response and Appendix to Defendant and the Court, and will so provide to the Office of the United States Trustee upon request.

15. For these reasons, Plaintiff should be authorized to file those redacted portions of the Response and Appendix thereto under seal. Plaintiff submits that other parties in interest will not be materially prejudiced because Response and Appendix may be reviewed by the Court and the U.S. Trustee.

COMPLIANCE WITH LOCAL RULE 9018-1(D)

16. In accordance with Local Rule 9018-1(d), counsel to Plaintiff and counsel to Defendant have conferred in good faith and reached agreement concerning the information to be redacted from the 9019 Motion and Settlement Agreement and remain sealed from public view.

17. Contemporaneously herewith, Plaintiff filed its “Notice of Proposed Redacted Version.”

NOTICE

18. Notice of this Motion to Seal shall be given to (a) the office of the United States Trustee for the District of Delaware; (b) counsel to Defendant. In light of the nature of the relief requested in this Motion to Seal, Plaintiff submits no other or further notice is necessary.

NO PRIOR REQUEST

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

WHEREFORE, Plaintiff respectfully requests 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: May 12, 2022

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EXHIBIT A

Proposed Order

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

In re:	Chapter 11
Welded Construction, L.P., <i>et al.</i> ,	Case No. 18-12378 (LSS)
Debtors. ¹	(Jointly Administered)
Welded Construction, L.P.,	
Plaintiff,	
vs.	Adv. No. 20-50932
Industrial Fabrics, Inc.,	Re: Adv. Docket No. 47, ____
Defendant.	

**ORDER AUTHORIZING THE PLAINTIFF TO
FILE UNDER SEAL PLAINTIFF’S RESPONSE IN
OPPOSITION TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

Upon the motion (the “Motion”)² of Plaintiff Welded Construction, L.P. (“Plaintiff” or “Debtor”), for entry of this Order authorizing, but not directing, Plaintiff to redact confidential information in *Plaintiffs Response in Opposition to Defendant’s Motion for Summary Judgment* (the “Response”) and the appendix thereto (the “Appendix”) designated as confidential pursuant to the *Stipulated Confidentiality and Protective Order* [Adv. D.I. 48] (the “Confidentiality Order”); 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

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

U.S.C. §§ 1408 and 1409; and due and proper notice of 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. Plaintiff is authorized to redact confidential information in the Response and Appendix. Plaintiff shall provide an unredacted version of the Response and Appendix and any other applicable filed documents to the Court, Defendant, and the Office of the U.S. Trustee.
3. Plaintiff is 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.

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Debtors. ¹	(Jointly Administered)
Welded Construction, L.P.,	Adv. No. 20-50932
Plaintiff,	
vs.	
Industrial Fabrics, Inc.,	
Defendant.	

CERTIFICATE OF SERVICE

I, Josef W. Mintz, Esquire, hereby certify that on May 12, 2022, copies of ***Plaintiff's Motion to File Under Seal Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment*** were caused to be served on the following via First Class Mail:

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1716 Wawaset Street
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Roland Gary Jones, Esq.
Jones & Associates
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Jane M. Leamy, Esq.
United States Department of Justice
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Dated: May 12, 2022

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