IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS

In re:	:	Chapter 15
KODIAK SERVICES USA, INC., *et al.*,	:	Case No. 19-70031 (TMD)
Debtors.[1]	:	Jointly Administered

EX PARTE MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL AND REDACT PORTIONS OF THE DEBTORS MOTION FOR ENTRY OF AN ORDER (A) RECOGNIZING AND GIVING FULL FORCE AND EFFECT TO THE ORDERS APPROVING SALE OF CERTAIN ASSETS OF THE DEBTORS FREE AND CLEAR OF LIENS, CLAIMS ENCUMBRANCES, AND INTERESTS, AND (B) GRANTING RELATED RELIEF

Ernst & Young Inc., in its capacity as the authorized foreign representative (the "Foreign Representative") for the above-captioned debtors (collectively, the "Debtors" or "Kodiak") hereby files this Motion for Redaction or Restriction of Electronic Access to Exhibit C (this "Motion") to the Foreign Representative's *Motion For Entry of an Order (A) Recognizing and Giving Full Force and Effect to the Orders Approving Sale of Certain Assets of the Debtors Free and Clear of Liens, Claims, Encumbrances, and Interests, and (B) Granting Related Relief* (the "Sale Motion")[2].

---

[1] The last four digits of the United States Tax Identification Number or Canadian Business Number of the Debtors, as applicable, follow in parentheses: Kodiak Services USA, Inc. (0169) ("Kodiak USA"), Kodiak Services Partnership (9809) ("Kodiak Partnership"), Kodiak Wireline Services Ltd. (2948) ("Kodiak Wireline"), Kodiak Energy Solutions Ltd. (2892) ("Kodiak Solutions"), Kodiak Tools Ltd. (3099) ("Kodiak Tools"), and 1623360 Alberta Ltd. (1045) ("162 Alberta", collectively with Kodiak Partnership, Kodiak Wireline, Kodiak Solutions, and Kodiak Tools, the "Canadian Debtors"). The Debtors' headquarters is located at #2230, 13 Mission Avenue, St. Alberta, Alberta. Kodiak's principal place of business in the US is located at its leased premises in Midland, Texas.

[2] Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such term in the Sale Motion.

Relief Requested

1. The Foreign Representative hereby moves this Court to allow the redactions appearing in Exhibit C to the Sale Motion, filed contemporaneous herewith. Exhibit C to the Sale Motion is a copy of the May 5, 2019 Agreement of Purchase and Sale (the "Sale Agreement") between the Foreign Representative and Lancaster Capital Advisory Corp, as Purchaser. The Sale Agreement contains confidential information relating to the sale of the Debtor's assets and therefore the Foreign Representative respectfully requests that this Court allow the Foreign Representative to redact certain information contained in the Sale Agreement.

Jurisdiction and Venue

2. This United States Bankruptcy Court for the Western District of Texas (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157 and section 1501 of title 11 of the United States Code (the "Bankruptcy Code"). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (P).

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408, 1409 and 1410.

4. The statutory bases for the relief requested herein are sections 105(a), and 107(b) of the Bankruptcy Code, Federal Rule of Bankruptcy Procedure (the "Bankruptcy Rule") 9018, and rules 9018 of the Local Court Rules of the United States Bankruptcy Court for the Western District of Texas (the "Local Rules") as necessary.

Basis for Relief

5. Section 105(a) of the Bankruptcy Code codifies the inherent equitable powers of the bankruptcy court and empowers the bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect

entities from potential harm that may result from the disclosure of certain confidential information. *See In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995). This section provides in relevant part: "On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may . . . protect an entity with respect to a trade secret or confidential research, development, or commercial information." 11 U.S.C. § 107(b)(1).

6. Further, Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code. Specifically, Bankruptcy Rule 9018 provides, in relevant part, that on motion "the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . . ."

7. 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." *Video Software Dealers Assocs. v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original). Moreover, the resulting order should be broad (i.e., "any order which justice requires"). *In re Global Crossing, Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003); Fed. R. Bankr. P. 9018. "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.

8. 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." *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (citing *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994)). Commercial information need not rise to the level of a "trade secret" to be protected under section 107(b) of the Bankruptcy Code. *Orion Pictures*, 21 F.3d at 28; *see also In re Faucett*, 438 B.R. 564, 567 (Bankr. W.D. Tex. 2010) (citing *In re Northstar Energy, Inc.*, 315 B.R. 425, 429 (Bankr.E.D.Tex.2004) ("A bankruptcy court is required to seal documentary information filed in court that does not rise to the level of a trade secret but that is so critical to the operations of the entity seeking the protective order that its disclosure will unfairly benefit that entity's competitors."). Rather, section 107(b)'s protections extend to commercial information that, if disclosed to the public, could be used by various parties for an unfair advantage. *Id*. at 27–28. Once a court determines that a party in interest is seeking to protect "commercial information," the court "is required to protect a requesting interested party and has no discretion to deny the application." *Id*. at 27.

9. Here, the Foreign Representative seeks to preserve the confidentiality of the Purchase Price to be paid for the Debtor's Assets. The Foreign Representative believes that maintaining the confidentiality of this information is necessary to ensure that the Debtors' are not harmed, thereby preserving the value of the Debtors' estates. The Foreign Representative's desire to redact the Purchase Price is based on the fact that such information has been maintained as confidential in the Canadian Court. The Foreign Representative has redacted only that information which it believes should remain confidential. Therefore, the Foreign Representative believes it has stuck the appropriate balance.

Prayer

WHEREFORE, the Foreign Representative respectfully requests that this Court enter the Order substantially in the form attached hereto as Exhibit A, granting the relief requested in this Motion and granting such other relief as is appropriate under the circumstances.

Dated: July 3, 2019

/s/ Oscar N. Pinkas
DENTONS US LLP
Oscar N. Pinkas (pro hac vice pending)
Lauren Macksoud (pro hac vice pending)
1221 Avenue of the Americas
New York, NY 10020
Tel: (212) 768-6700
Fax: (212) 768-6800
Email: oscar.pinkas@dentons.com
lauren.macksoud@dentons.com

and

Mark Wege
Texas Bar No. 21074225
LyondellBasell Tower
1221 McKinney Street
Suite 1900
Houston, TX 77010
Tel: (713) 658-4600
Fax: (713) 739-0834
Email: mark.wege@dentons.com

Counsel for Ernst & Young Inc., in its capacity as receiver for the Debtors

EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS

In re:	Chapter 15
KODIAK SERVICES USA, INC., *et al.*,	Case No. 19-70031 (TMD)
Debtors.[1]	Jointly Administered

ORDER GRANTING EX PARTE MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO FILE UNDER SEAL AND REDACT PORTIONS OF THE DEBTORS MOTION FOR ENTRY OF AN ORDER (A) RECOGNIZING AND GIVING FULL FORCE AND EFFECT TO THE ORDERS APPROVING SALE OF CERTAIN ASSETS OF THE DEBTORS FREE AND CLEAR OF LIENS, CLAIMS ENCUMBRANCES, AND INTERESTS, AND (B) GRANTING RELATED RELIEF

[1] The last four digits of the United States Tax Identification Number or Canadian Business Number of the Debtors, as applicable, follow in parentheses: Kodiak Services USA, Inc. (0169) ("Kodiak USA"), Kodiak Services Partnership (9809) ("Kodiak Partnership"), Kodiak Wireline Services Ltd. (2948) ("Kodiak Wireline"), Kodiak Energy Solutions Ltd. (2892) ("Kodiak Solutions"), Kodiak Tools Ltd. (3099) ("Kodiak Tools"), and 1623360 Alberta Ltd. (1045) ("162 Alberta", collectively with Kodiak Partnership, Kodiak Wireline, Kodiak Solutions, and Kodiak Tools, the "Canadian Debtors"). The Debtors' headquarters is located at #2230, 13 Mission Avenue, St. Alberta, Alberta. Kodiak's principal place of business in the US is located at its leased premises in Midland, Texas.

Before the Court is the ex parte motion of Ernst & Young Inc., in its capacity as the authorized foreign representative (the "Foreign Representative") for the above-captioned debtors (collectively, the "Debtors" or "Kodiak") for Entry of an Order Authorizing the Debtors to File Under Seal and Redact Portions of the Debtors' Sale Motion (the "Motion") filed on [July __, 2019] in the above captioned case. The Motion asserts that certain exhibits to *the Motion For Entry of an Order (A) Recognizing and Giving Full Force and Effect to the Order Approving Sale of Certain Assets of the Debtors Free and Clear of Liens, Claims, Encumbrances, and Interests, and (B) Granting Related Relief* (the "Sale Motion") filed by the Foreign Representative [Docket No. __] contains certain information that the Foreign Representative wishes to maintain as confidential. Having reviewed the Motion and file in the case, the Court has determined that it will grant the relief stated in this order.

IT IS ORDERED that the Foreign Representative re-file the original Exhibit C to the Sale Motion with all confidential information redacted within thirty (30) days of entry of this order. If re-filed within this time, the redacted Exhibit C will be deemed filed as of the date of the original filing.

# # #

Submitted by:

DENTONS US LLP
Oscar N. Pinkas (admitted pro hac vice)
Lauren Macksoud (admitted pro hac vice)
1221 Avenue of the Americas
New York, NY 10020
Tel: (212) 768-6700
Fax: (212) 768-6800
Email: oscar.pinkas@dentons.com
lauren.macksoud@dentons.com

-and-

Mark Wege
Texas Bar No. 21074225
LyondellBasell Tower
1221 McKinney Street
Suite 1900
Houston, TX 77010
Tel: (713) 658-4600
Fax: (713) 739-0834
Email: mark.wege@dentons.com

Counsel for Ernst & Young Inc., in its capacity as Foreign Representative for the Debtors