

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

	§	
	§	
<b>In re</b>	§	<b>Chapter 11</b>
	§	
<b>EXPRESS ENERGY SERVICES</b>	§	
<b>OPERATING, LP, et al.,</b>	§	<b>Case No. 09-38044</b>
	§	
	§	
<b>Debtors.</b>	§	
	§	
	§	<b>Jointly Administered</b>

**DEBTORS’ EMERGENCY MOTION PURSUANT TO SECTION 107(b)(1) OF THE  
BANKRUPTCY CODE AND BANKRUPTCY RULE 9018 FOR AN ORDER  
AUTHORIZING THE FILING OF THE PAYEE EXHIBIT UNDER SEAL**

TO THE HONORABLE JEFF BOHM  
UNITED STATES BANKRUPTCY JUDGE:

Express Energy Services Operating, LP and its affiliated debtors in the above referenced chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”),<sup>1</sup> file this emergency motion (the “**Motion**”) and respectfully represent as follows:

**I.**

**RELIEF REQUESTED**

1. Contemporaneously with this Motion, the Debtors filed an *Emergency Motion for Authority to Pay (I) Undisputed Prepetition Obligations Owed to Potential Lien Claimants; (II)*

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<sup>1</sup> On October 27, 2009, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors’ chapter 11 cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Information regarding the Debtors’ business and events leading to the Debtors’ bankruptcy filings can be found in the Declaration of Darron Anderson in Support of the Debtors’ Chapter 11 Petitions and First-Day Motions (Docket No. 2).

*Undisputed Prepetition Sole Source Provider Obligations; and (III) the Undisputed Prepetition Refund Obligation* (the “**Essential Obligations Motion**”), which seeks authority, but not direction, to pay certain prepetition obligations of a certain customer of the Debtors and certain third-party providers of goods and services (the “**Payees**”). “Exhibit A” to the Essential Obligations Motion (the “**Payee Exhibit**”) identifies the names of, and the proposed payment amounts to, each of the Payees.

2. In connection with the Essential Obligations Motion, the Debtors request the entry of an order, pursuant to section 107(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9018, authorizing (i) the Debtors to file the Payee Exhibit under seal and (ii) the Clerk of the Court to only release copies of the Payee Exhibit to the Court, the United States Trustee for the Southern District of Texas (the “**U.S. Trustee**”), counsel to Credit Suisse, as administrative agent to certain of the Debtors’ prepetition lenders (the “**Prepetition Agent**”), and counsel to any statutory committee(s) appointed in these cases upon such parties’ request. A proposed order granting the relief requested in the Motion is attached hereto as **Exhibit A**.

## II.

### **BASIS FOR RELIEF REQUESTED**

3. Section 107(b) of the Bankruptcy Code authorizes the Court to issue orders to protect entities from potential harm caused by the disclosure of confidential or sensitive commercial information. See Young Again Prods., Inc. v. Supplement Spot, LLC (In re Supplement Spot, LLC), 2009 WL 2006834, at \*11 (Bankr. S.D. Tex. July 8, 2009); N. Bay Gen. Hosp., Inc. v. McNaul (In re N. Bay Gen. Hosp.), 404 B.R. 429, 438 (Bankr. S.D. Tex. 2009).

4. Specifically, section 107(b) provides:

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 . . .

11 U.S.C. § 107(b)(1). Further, Bankruptcy Rule 9018 states:

On motion or on its own initiative, with or without notice, 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 . . .

FED. R. BANKR. P. 9018. Together, section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 operate to ensure that a debtor need not choose between involuntary disclosure of vital business information and the availability of bankruptcy relief. In re Northstar Energy, Inc., 315 B.R. 425, 430 (Bankr. E.D. Tex. 2004).

5. In granting relief under section 107(b) of the Bankruptcy Code, a bankruptcy court may seal information that, while not necessarily rising to the level of a trade secret, is so critical to the operations of the debtor that “its disclosure will unfairly benefit [the debtor’s] competitors.” In re Northstar Energy, Inc., 315 B.R. at 429. Specifically, a court is required to protect “confidential commercial information.” Id. at 428-29. “Commercial information” is defined as “information which would cause an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” Id. (quoting Video Software Dealers Assoc. v. Orion Pictures Corp. (In re Orion Pictures Corp.), 21 F.3d 24, 27 (2d Cir. 1994)).

6. Sealing the Payee Exhibit will allow the Debtors to quickly and individually address the Payees without signaling to them that early payments and other concessions are warranted, and will place the Debtors in a better bargaining position with respect to other Potential Lien Claimants and Sole Source Providers (each as defined in the Essential Obligations Motion) that are not on the Payee Exhibit. In addition, sealing the Payee Exhibit will prevent the Debtors' competitors from gaining an unfair business advantage by having knowledge of the Debtors' important vendors, suppliers, and customer.

7. The Court, on October 29, 2009, entered an order (Docket No. 44) that, among other things, set December 7, 2009 as the date for a hearing (the "**Confirmation Hearing**") on the confirmation of the Debtors' proposed plan of reorganization. In addition to maintaining the Debtors' business operations, the Debtors' senior management and employees, concurrently with their professional advisors, are focused on proceeding through the bankruptcy process given the period between the Commencement Date and the Confirmation Hearing. Because a drain on the Debtors' resources, which may result from the Payee Exhibit becoming public, could affect the Debtors' ability to prepare for the Confirmation Hearing, it is in the Debtors' best interest to seal the Payee Exhibit.

8. Courts in this district have granted relief in other cases that sealed the identity of, and amounts due to, entities receiving payment on account of amounts due by a debtor prepetition. See In re Edge Petroleum Corp., Case No. 09-20644 (Bankr. S.D. Tex. Oct. 5, 2009) (Docket No. 54) (authorizing the Clerk of the Court to seal certain vendor lists relating to a motion to pay prepetition amounts owed to such vendors and release copies only to the U.S. Trustee, prepetition lenders, and attorneys for any statutory committee); In re Tex. Petrochemicals LP, Case No. 03-40258 (Bankr. S.D. Tex. July 31, 2003) (Docket No. 89)

(granting a debtor's oral motion to temporarily seal certain vendor lists relating to a motion to pay prepetition amounts owed to such vendors).

**III.**

**WAIVER OF BANKRUPTCY RULE 6004**

9. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 10-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**IV.**

**JURISDICTION**

10. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**V.**

**NOTICE**

11. The Debtors have served notice of this Motion on (i) the United States Trustee for the Southern District of Texas, Houston Division (Attn: Hector Duran); (ii) Credit Suisse, as administrative agent for (a) the Debtors' prepetition secured lenders under the Credit Agreement dated as of July 11, 2008, as amended, and (b) the Swap Agreement dated as of July 11, 2008; (iii) Akin Gump Strauss Hauer & Feld (Attn: Charles R. Gibbs), attorneys for Credit Suisse; (iv) the Debtors' 20 largest unsecured creditors (on a consolidated basis); and (v) all applicable government agencies, to the extent required by the Bankruptcy Rules or the Bankruptcy Local Rules for the Southern District of Texas. The Debtors submit that no other or further notice need be provided.

WHEREFORE, the Debtors request entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: November 3, 2009  
Houston, Texas

/s/ Alfredo R. Pérez  
Alfredo R. Pérez (15776275)

WEIL, GOTSHAL & MANGES LLP  
700 Louisiana Street, Suite 1600  
Houston, Texas 77002  
Telephone: (713) 546-5000  
Facsimile: (713) 224-9511

Attorneys for Debtors  
and Debtors in Possession

**EXHIBIT A**

**Proposed Order**



all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is ORDERED that

1. The Motion is GRANTED to the extent provided herein.
2. The Clerk of the Court shall seal the Payee Exhibit.
3. The Clerk of the Court is authorized to release copies of the Payee Exhibit

to the Court, the United States Trustee for the Southern District of Texas, counsel to the Prepetition Agent, and counsel to any statutory committee upon request.

4. The Debtors, their officers, employees, agents, and professionals are authorized to take or refrain from taking such acts as are necessary and appropriate to implement and effectuate the relief granted herein.

5. This Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

Dated: Houston, Texas  
\_\_\_\_\_, 2009

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HONORABLE JEFF BOHM  
UNITED STATES BANKRUPTCY JUDGE