



under the DIP Facility, and Agreed Order Regarding Filing Pleadings and Documents Under Seal (the “Stipulation”), filed with this Court by the Debtors and the Committee on October 14, 2008, Docket No. 6; and the Motion to File Under Seal (the “Confidential Information Motion”), filed with this Court by the Committee on October 21, 2008, Docket No. 14, came on for hearing on October 31, 2008. Counsel for the Appellant-Cross Appellee, the Committee, and counsel for Appellee-Cross Appellant, the Debtors, appeared.

Based upon the argument of counsel, the pleadings filed by the parties, and a review of the record on appeal, the Court finds the following:

1. Section 107(b) of the Bankruptcy Code, 11 U.S.C. § 101, et seq., provides that “[O]n the request of a party in interest, the bankruptcy court shall,... protect an entity with respect to ... confidential research, development, or commercial information.” Rule 9018 of the Bankruptcy Rules of Civil Procedure provides that “On motion or on its own initiative, with or without notice, the court may make any order which justice requires to protect the estate...in respect of a trade secret or other confidential research, development or commercial information....” FED.R.BANKR.P. 9018.

2. The Bankruptcy Code also provides that a committee for unsecured creditors of a debtor has the power and duty to consult with the debtor, to investigate the debtor’s financial condition and the its business operations, and to participate in the formulation of a plan. 11 U.S.C. § 1103(c)(1)(2) and (3). This committee also has a statutory duty to provide access to information for unsecured creditors of the debtor who are not on the committee. 11 U.S.C. §1102(b)(3). In order to facilitate an open dialogue between the debtor and the committee, while striking a balance between protecting confidential research and commercial information, and allowing the committee to meet its statutory obligation to provide information, a practice of obtaining a confidentiality order at the beginning of a case

has developed in large commercial bankruptcy cases. See, e.g., *In re Refco Inc.*, 336 B.R. 187, 200-201 (Bankr. S.D. N.Y. 2006), *In re Dana Corp.*, No. 06-10354. Docket No. 331 (Bankr. S.D.N.Y.2006) Motion of Debtors and Debtors in Possession Pursuant to Sections 105(a), 107(b)(3) (A) of the Bankruptcy Code, for an Order Confirming that Official Committees are not authorized or Required to Provide Access to (A) Confidential Information of the Debtors or (B) Privileged Information.

3. The Committee and the Debtors sought such a confidentiality order in the Debtors' jointly-administered bankruptcy cases through their Motion for Approval of Stipulation Between the Debtors and the Official Committee of Unsecured Creditors of Propex Inc., et al., Regarding Confidential Information (the "February Confidentiality Motion"), filed with the Bankruptcy Court on February 21, 2008, Bankruptcy Court Docket No. 202.

4. Notice of the February Confidentiality Motion was provided to all creditors and other parties in interest in the Debtors' jointly administered bankruptcy cases. As no objection to the relief sought thereunder was filed, the Bankruptcy Court, on February 27, 2008, entered an agreed order (the "February Confidentiality Order"). See Stipulation Between the Debtors and the Official Committee of Unsecured Creditors of Propex Inc., et al., Regarding Confidential Information, Stipulation, Ex. A (Bankruptcy Court Docket No. 221). The February Confidentiality Order protected any information and material furnished to the Committee by the Debtors provided that such information or material was not known by the recipient, was not available to the public and was not, and did not become, known to the recipient from a non-confidential source (the "Confidential Information").

5. The February Confidentiality Order required the Committee to seek a protective order if it sought to disclose Confidential Information in a court proceeding and to give the Debtors notice of the motion seeking the protective order.

6. Subsequent thereto, the Committee notified the Debtors of its intention to use Confidential Information as proof in its objection to Debtor's Motion for an Order Authorizing and Approving Debtors' Amendment to Security Agreement and Extension and Confirming Grant of Lien on the Stock of the Debtors' Foreign Subsidiaries (the "Confirmation Motion"), filed by the Debtors on July 29, 2008. Docket No. 1, Part 15 (Bankruptcy Court Docket No. 502).

7. On August 13, 2008, the Committee filed a motion seeking entry of an additional stipulation regarding Confidential Information related to the Confirmation Motion. The materials to be submitted by the Committee included pleadings and/or documents that contain Confidential Information. See Motion to Approve and Enter Stipulation Between and Among the Debtors, the Official Committee of Unsecured Creditors and BNP Paribas, as Administrative Agent, Under the DIP Facility and Agreed Order Regarding Filing Pleadings and Documents Under Seal (the "August Confidentiality Motion"), Docket No. 1, Part 18 (Bankruptcy Court Docket No. 534).

8. Notice of the August Confidentiality Motion was provided to creditors and parties in interest as required by Order Approving Notice Procedures. No objection to the relief sought there under was filed. The Bankruptcy Court, on August 14, 2008, entered an order allowing the Debtors, the Committee, and BNP Paribas to file pleadings and documents under seal in any proceeding related to the Confirmation Motion. See Stipulation Between and Among the Debtors, the Official Committee of Unsecured Creditors and BNP Paribas, as Administrative Agent, Under the DIP Facility and Agreed Order Regarding Filing Pleadings and Documents Under Seal, Docket No. 1, Part 20 (Bankruptcy Court Docket No. 537).

9. On August 20, 2008, the Bankruptcy Court handed down its rulings on the Confirmation Motion. See Order, Docket No. 1, Part 27 (Bankruptcy Docket No. 564) The Bankruptcy Court's rulings as to the Confirmation Motion are the subject of this appeal.

10. As previously stated herein, on October 14, 2008, the Debtors and the Committee filed their Stipulation Motion with this Court, seeking entry of a stipulation providing that the Confidential Information continue to be maintained under seal in the appeal now pending in this Court. Similarly, on October 21, 2008, the Committee filed its Confidential Information Motion, seeking to have its brief in this appeal filed under seal.

11. LR 26.2(b) requires that "Court Records or portions thereof shall not be placed under seal unless and except to the extent that the person seeking the sealing thereof shall have first obtained, for good cause shown, an order of the Court specifying those Court Records, categories of Court Records or portions thereof which shall be placed under seal."

12. Based on the above-described orders of the Bankruptcy Court regarding protection of Confidential Information, the notices of the requests for protective orders which were provided to other creditors and parties in the proceedings below, the absence of any objections to the same, and the nature of the information sought to be protected, this Court finds that cause exists to maintain the Confidential Information and any pleading containing such Confidential Information under seal.

Based upon those findings, it is hereby ordered that the Court GRANTS the Confidential Information Motion. [Doc. 14].

It is further ordered that any party seeking to file an additional pleading under seal shall file a motion requesting that the pleading and any accompanying exhibits be filed under seal, but may represent that the causes for granting the Confidential Information Motion also apply to that pleading for the reasons given in this Order, and no further showing of cause shall be required.

The Stipulation Motion is DENIED. [Doc. 5].

Dated: November 5, 2008

*s/William B. Mitchell Carter*  
UNITED STATES MAGISTRATE JUDGE