

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

In re:	§	
	§	Chapter 11
	§	
CHESAPEAKE ENERGY CORPORATION, <i>et al.</i> , ¹	§	Case No. 20-33233 (DRJ)
	§	
Reorganized Debtors.	§	(Jointly Administered)
	§	

**REORGANIZED DEBTORS' MOTION FOR ENTRY OF
AN ORDER AUTHORIZING THE REORGANIZED DEBTORS
TO FILE THE STIPULATION AND AGREED ORDER UNDER SEAL**

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing. Represented parties should act through their attorney.

The above-captioned reorganized debtors (before the Effective Date of the Plan, the “Debtors,” and after the Effective Date of the Plan, the “Reorganized Debtors” or “Lessees,” as applicable) state as follows in support of this motion:

Relief Requested

1. The Reorganized Debtors seek entry of an order, substantially in the form attached hereto: (a) authorizing the Reorganized Debtors to redact and file under seal certain Confidential

¹ A complete list of each of the Reorganized Debtors in these chapter 11 cases may be obtained on the website of the Reorganized Debtors’ claims and noticing agent at <https://dm.epiq11.com/chesapeake>. The location of Reorganized Debtor Chesapeake Energy Corporation’s principal place of business and the Reorganized Debtors’ service address in these chapter 11 cases is 6100 North Western Avenue, Oklahoma City, Oklahoma 73118.

Information (as defined below) in connection with the *Stipulation and Agreed Order Regarding the Claims of Tornado Venture Quatro, LLC, Tornado Venture Cinco, LLC and Tornado Venture Seis, LP* (the “Stipulation”)² and (b) granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Reorganized Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and rules 9037-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

Background

5. On October 29, 2021, the Reorganized Debtors filed the Stipulation together with an accompanying copy of the settlement agreement (the “Settlement Agreement”), by and among the Reorganized Debtors, CNOOC Energy U.S.A. (“CEU”), and Jamestown Resources, L.L.C. (“Jamestown” and together with CEU, Jamestown, and the Debtors or Reorganized Debtors, as applicable, the “Lessees”) and Tornado Venture Quatro, LLC (“Tornado Quatro”), Tornado

² Capitalized terms used, but not otherwise defined herein, shall have the same meanings ascribed to such terms in the Stipulation.

Venture Cinco, LLC (“Tornado Cinco”), and Tornado Venture Seis, LP (“Tornado Seis”) (collectively, the “Claimants” or the “Lessors,” as applicable, and together with the Lessees, the “Settlement Parties”). The Settlement Agreement is subject to confidentiality provisions due to its disclosure of certain facts, terms, negotiations, and other commercially sensitive information (the “Confidential Information”). The Settlement Agreement contains a provision that requires the Settlement Parties to keep the Settlement Agreement and the Confidential Information contained therein confidential. Further, the disclosure of the commercial terms of the Settlement Agreement, including information regarding the amount by which the Settlement Parties agreed to resolve their disputes and amendments to the terms of the Settlement Parties’ go-forward agreements, would offer an unfair advantage to the Settlement Parties’ competitors and additional parties with whom the Settlement Parties may be involved in disputes similar to those discussed in and resolved by the Settlement Agreement. The Confidential Information should therefore not be publicly disclosed.

6. The Reorganized Debtors, on behalf of the Settlement Parties, seek entry of an order authorizing them to file the Confidential Information under seal.

Basis for Relief

7. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with authority to issue orders that will 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:

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).

8. Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code, providing 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.” Fed. R. Bankr. P. 9018. Further, Bankruptcy Local Rule 9037-1 provides, in relevant part, that when it may be practicable to redact confidential information from a document, “(i) a redacted document should be filed, not under seal; and (ii) the unredacted document should simultaneously be filed, under seal.”

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) (emphasis in original); *see also In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995) (“The court has authority to seal court records, in order to protect trade secrets or confidential research, development, or confidential information, or to protect a person with regard to a scandalous or defamatory matter.”); *In re 50-Off Stores, Inc.*, 213 B.R. 646, 655–56 (Bankr. W.D. Tex. 1997) (“The statute, on its face, states that the bankruptcy court is *required* to protect such an entity on request of a party in interest.”) (emphasis in original). Stated differently, 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 power 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.” *See In re Glob. Crossing Ltd.*, 295 B.R. 720, 724 (Bankr. S.D. N.Y. 2003).

10. Confidential commercial information “has been defined as information which would cause ‘an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.’” *In re Faucett*, 438 B.R. 564, 567–68 (Bankr. W.D. Tex. 2010) (quoting *Orion Pictures Corp.*, 21 F.3d at 27). Commercial information need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *See 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.’”) (quoting *In re Barney’s Inc.*, 201 B.R. 703, 708–709 (Bankr.S.D.N.Y.1996)); *see also Orion Pictures*, 21 F.3d at 27–28 (holding that section 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 must show only that the information it wishes to seal is “confidential” and “commercial” in nature).

11. The Settlement Parties frequently enter into settlements or other agreements related to oil and gas leases on private, confidential bases. The disclosure of the commercial terms of the Settlement Agreement, including the amount by which the Settlement Parties agreed to resolve their disputes and amendments to the terms of the Settlement Parties’ go-forward agreements,

would offer an unfair advantage to the Settlement Parties' competitors and additional parties with whom the Settlement Parties may be involved in disputes similar to those discussed in and resolved by the Settlement Agreement.

12. The Settlement Parties have recognized (and have been responsive to) the presumption in favor of public access to court records, and have narrowly tailored the request set forth in this motion to protect only the kind of commercially sensitive information that is entitled to be protected under section 107 of the Bankruptcy Code.

13. In order to maintain the confidentiality of certain financial and commercial terms of the Settlement Agreement attached to the Stipulation, the Court should authorize the Reorganized Debtors to file a redacted version of the Stipulation and attached Settlement Agreement that redacts Confidential Information. The Stipulation and the Settlement Agreement contain sensitive commercial information that is protected under section 107(b) of the Bankruptcy Code. The Stipulation and Settlement Agreement therefore contain statutorily-protected confidential information and should be sealed.

14. Accordingly, the Reorganized Debtors propose to file a redacted version of the Stipulation and attached Settlement Agreement that redacts Confidential Information. The Reorganized Debtors will provide the Court and the U.S. Trustee with an unredacted version of the Settlement Agreement. The Reorganized Debtors believe that the proposed format for disclosure of information, in which the Reorganized Debtors will publicly file a redacted version of the Stipulation and Settlement Agreement and provide fully unredacted versions of the Stipulation and the Settlement Agreement to the Court and the U.S. Trustee is carefully tailored to provide appropriate levels of information in these cases while still maintaining confidentiality of "commercial information" where truly necessary.

Notice

15. The Reorganized Debtors will provide notice of this motion to: (a) the United States Trustee for the Southern District of Texas; (b) CEU; (c) Jamestown; (d) Tornado Quatro; (e) Tornado Cinco; (f) Tornado Seis; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Reorganized Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

[Remainder of page intentionally left blank.]

WHEREFORE, the Reorganized Debtors respectfully request that the Court enter the order, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas
October 29, 2021

/s/ Matthew D. Cavanaugh

JACKSON WALKER L.L.P.

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Certificate of Service

I certify that on October 29, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Matthew D. Cavanaugh

Matthew D. Cavanaugh