IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
AgFeed USA, LLC, et al.,[1]	)	Case No. 13-11761 (BLS)
	)	
Debtors.	)	Jointly Administered
	)	
	)	**Objection deadline: September 16, 2016 at 4:00 p.m.**
	)	**Hearing date: September 28, 2016 at 11:00 a.m.**

JOINT MOTION OF JLL CONSULTANTS, INC., NOT INDIVIDUALLY BUT SOLELY AS TRUSTEE OF THE AGFEED LIQUIDATING TRUST, BUCHANAN INGERSOLL & ROONEY PC, AND WILLIAM W. UCHIMOTO FOR ENTRY OF AN ORDER AUTHORIZING THE FILING UNDER SEAL OF CERTAIN PORTIONS OF A SETTLEMENT AGREEMENT AMONG THE PARTIES

JLL Consultants, Inc., not individually but solely as trustee ("Trustee") of the AgFeed Liquidating Trust ("Trust,"), Buchanan Ingersoll & Rooney PC ("Buchanan") and William W. Uchimoto ("Uchimoto", and collectively with the Trustee and Buchanan, the "Parties"), by and through their respective undersigned attorneys, hereby move (the "Motion"), under § 107(b) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 9018-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for entry of an order substantially in the form attached to this Motion as Exhibit A authorizing the Parties to file under seal certain portions of a settlement agreement (the "Settlement Agreement")[2] among the Parties. In support of the Motion, the Parties respectfully state as follows:

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are as follows: AgFeed USA, LLC (8748) and AgFeed Industries, Inc. (7168). The chapter 11 cases of all other affiliated Debtors have been closed.

[2] A redacted copy of the Settlement Agreement is attached hereto as Exhibit B. Pursuant to 11 U.S.C. § 107(c)(3), an unredacted copy of the Settlement Agreement is being served with this Motion upon the Office of the United States Trustee. In addition, pursuant to Local Rule 9018-1, redacted copies of the Settlement Agreement will be filed in accordance with CM/ECF procedures.

JURISDICTION & VENUE

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 1334(b) and 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012 (the "Amended Standing Order"). This Motion is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested in this Motion are §§ 105 and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018 and Local Rule 9018-1.

BACKGROUND

3. On July 15, 2013, AgFeed Industries ("AFI") and certain affiliated debtors (collectively, the "Debtors") each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

4. On September 12, 2014, the Debtors filed the *Debtors' Revised Second Amended Chapter 11 Plan of Liquidation Supported by the Official Committee of Equity Security Holders* [D.I. 1370] (the "Plan") and the related disclosure statement [D.I. 1371].

5. On November 4, 2014, the Court confirmed the Debtors' Plan (the "Confirmation Order") [D.I. 1535]. The Plan established a Liquidating Trust and the Liquidating Trustee was appointed and given the authority to, among other things, pursue, litigate or settle causes of action. *See* Plan § 6.3. Pursuant to the Plan, the Trustee is the sole shareholder, officer, and director of AgFeed Industries. *See* Plan § 6.8. The Plan became effective on November 10, 2014.

6. On July 15, 2015, the Trustee filed an adversary proceeding in the Bankruptcy Court, captioned *JLL Consultants Inc., not individually but solely as the Trustee of the AgFeed*

Liquidating Trust v. Buchanan Ingersoll & Rooney PC, Stevens & Lee PC, and William Uchimoto, No. 15-50927 (Bankr. D. Del.) (the "Adversary Proceeding"), in which it asserted claims against Buchanan and Uchimoto.[3]

7. Buchanan and Uchimoto deny liability or any wrongdoing.

8. On July 12, 2016, the Parties participated in mediation (the "Mediation") with The Honorable Abraham J. Gafni (Ret.). The Mediation was successful in that the Parties were able to reach an agreement and believe it would be in their respective best interests to settle certain disputes between and among them, including those asserted in the Adversary Proceeding, and avoid the risk, expense, and inconvenience of continued litigation.

9. The Parties, without any of them making any admission of liability to any person, have agreed on the essential terms for resolution of the Adversary Proceeding and have entered into the Settlement Agreement.

RELIEF REQUESTED

10. Contemporaneously herewith, the Parties are filing a motion to approve the Settlement Agreement pursuant to section 9019 of the Bankruptcy Code (the "9019 Motion"). The Settlement Agreement contains a confidentiality provision that requires certain "Key Terms" (as defined in the Settlement Agreement), including the amount of settlement payment to be made to the Trust, to be filed under seal.

11. Accordingly, the Parties respectfully request entry of an order authorizing the filing under seal of certain portions of the Settlement Agreement in accordance with section 107(b) of the bankruptcy Code, Bankruptcy Rule 9018 and Local Rule 9018-1, so that the confidential materials contained in the Settlement Agreement are disclosed only to the Court and

[3] Stevens & Lee, PC is also a named defendant in the Adversary Proceeding but is not part of the Settlement Agreement.

certain parties and/or their counsel.

BASIS FOR RELIEF REQUESTED

12. Section 105(a) of the Bankruptcy Code codifies the Court's inherent equitable powers and empowers it 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). Moreover, pursuant to section 107(b) of the Bankruptcy Code, the Court may authorize the Parties to file the Settlement Agreement under seal by permitting the issuance of orders that 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, that:

> 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.

13. Bankruptcy Rule 9018 sets forth the procedures by which a party may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 provides, in relevant part, that:

> On 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.

14. Further, Local Rule 9018-1(b) provides, in relevant part, that "[a]ny party who seeks to file documents under seal must file a motion to that effect." Del. Bankr. L. R. 9018-1(b).

15. Unlike its counterpart in Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to

demonstrate "good cause." *See, e.g., Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994). Rather, 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 interested party and has no discretion to deny the application." *Id.* at 27. 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 are required to provide such protections "generally where open inspection may be used 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." *In re Global Crossing, Ltd.*, 295 B.R. at 724.

16. The term "confidential commercial information" should not be narrowly construed. *Orion Pictures*, 21 F.3d at 28. Commercial information does not have to rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *See id.* (finding 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 has to show only that the information it wishes to seal is "confidential and commercial" in nature).

17. Here, the financial terms of the Settlement Agreement are the only terms the Parties seek to redact. The Settlement Agreement contains a confidentiality provision that requires the Parties not to disclose the financial terms of the Settlement Agreement, as well as prior drafts of the Settlement Agreement. Moreover, the terms of those drafts as well as all settlement negotiations and discussions of any kind between the Parties are governed by the Bankruptcy Court's Order dated November 24, 2015, in the Adversary Proceeding [Dkt. No. 31] and shall be considered "Confidential Information."

18. As the Third Circuit has noted, "[s]ettlement agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts." *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010). One way to encourage settlements is to adhere to parties' expressed intent for confidentiality over certain settlement terms. *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 143 (2d Cir. 2010). Moreover, disclosure of the Confidential Information and Key Terms contained in the Settlement Agreement could adversely affect the Parties. *See In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006). Thus, given both the commercial nature of the information in the Settlement Agreement and the agreement of the Parties to keep such information confidential, the Parties respectfully request authorization to file under seal certain portions of the Settlement Agreement.

NO PRIOR REQUEST

19. No previous request for the relief sought herein has been made to this Court or any other Court.

NOTICE

20. Notice of this Motion has been provided to the Office of the United States Trustee, counsel to Buchanan, counsel to Uchimoto, counsel to Stevens & Lee, PC, counsel to each defendant in the adversary proceedings No. 15-50210, No. 15-50928, and No. 15-50929, and all parties requesting notice under Bankruptcy Rule 2002 as of the date of this Motion. In light of the nature of the relief requested in this Motion, the Debtors submit no other or further notice is necessary under the circumstances.

CONCLUSION

Wherefore, the Parties request that the Court enter an order substantially in the form attached here as Exhibit A granting the Motion, authorizing the filing under seal of certain portions of the Settlement Agreement, and any other further relief the Court deems appropriate under the circumstances.

Date: September 2, 2016
Wilmington, Delaware

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