UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: EXIDE TECHNOLOGIES, *et al.*,[1] Debtors.	)	Chapter 11 Case Nos. 02-11125 (KJC) (Jointly Administered)

OBJECTION OF THE PENSION BENEFIT GUARANTY CORPORATION TO CONFIRMATION OF DEBTORS' PLAN OF REORGANIZATION

The Pension Benefit Guaranty Corporation ("PBGC") hereby objects to the Debtors' Third Amended Joint Plan of Reorganization dated September 8, 2003 ("POR"), to the extent the POR improperly limits the obligations of the reorganized debtors and certain non-debtors under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1301-1461 (2000).

STATUTORY BACKGROUND

PBGC is a wholly-owned United States Government corporation created to administer and enforce the provisions of Title IV of ERISA. As administrator of ERISA's insurance program, PBGC insures the payment of certain guaranteed pension benefits to participants in pension plans that terminate when covered by Title IV. 29 U.S.C. § 1322.

A contributing sponsor of a pension plan and all members of its controlled group, as that term is defined in 29 U.S.C. § 1301(a)(14), are jointly and severally responsible for compliance with ERISA's minimum funding standards and for the annual premiums due to the PBGC with

[1] The Debtors in these proceedings are: Exide Technologies f/k/a Exide Corporation; Exide Delaware, L.L.C.; Exide Illinois, Inc.; RBD Liquidation, L.L.C.; Dixie Metals Company; and Refined Metals Corporation.

respect to covered plans. The minimum funding obligation accrues day-to-day and continues through the last day of the year in which the pension plan is terminated in accordance with Title IV of ERISA. See Rev. Rul. 79-237, 1979-2 C.B. 190.

The exclusive methods of terminating a single-employer pension plan that is covered by Title IV are:

(a) voluntary termination by the plan sponsor through the standard termination procedure described in 29 U.S.C. § 1341(b),

(b) voluntary termination by the plan sponsor through the distress termination procedures described in 29 U.S.C. § 1341(c), or

(c) involuntary termination by the PBGC under 29 U.S.C. § 1342. *See Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 445 (1999) (strict compliance with ERISA is the sole means by which an ERISA-covered pension plan may be terminated).

By definition, a plan which terminates through a distress termination or involuntary termination does not have sufficient assets to pay participants the benefits they are entitled to receive under their plan and ERISA. In such cases, the PBGC is appointed statutory trustee of the plan in order to pay eligible participants their insured benefits. 29 U.S.C. § 1342(b)(1) and (d)(1)(B)(i).

As the statutory trustee, the PBGC has the power to collect any amounts due to the plan. 829 U.S.C. § 1342(d)(1)(B)(ii). In addition, the sponsor and each entity in its controlled group are jointly and severally liable to PBGC for the plan's underfunding pursuant to 29 U.S.C. § 1362. *See* 29 U.S.C. § 1301(a)(18).

FACTUAL BACKGROUND

1. On April 15, 2002, Exide Technologies f/k/a Exide Corporation, Exide Delaware, L.L.C., Exide Illinois, Inc., and RBD Liquidation, L.L.C. (the "Original Debtors") filed voluntary petitions under Chapter 11 of the Bankruptcy Code. On November 21, 2002, Dixie Metals Company and Refined Metals Corporation, each an affiliate of the Original Debtors (collectively, with the Original Debtors, the "Debtors") filed voluntary petitions under chapter 11 of the Bankruptcy Code.

2. Exide Technologies is the contributing sponsor of nine defined benefit pension plans [2] (collectively, the "Pension Plans"). *See* 29 U.S.C. § 1301(a)(13). The other Debtors are members of Exide Technologies' controlled group. *See* 29 U.S.C. § 1301(a)(14). Certain non-debtor affiliates of the Debtors are also members of Exide Technologies' controlled group.

3. The Pension Plans are single-employer, defined benefit pension plans that are covered by Title IV of ERISA.

4. PBGC filed contingent claims against each of the Debtors for the unfunded benefit liabilities of the Pension Plans, and contingent claims on behalf of the Pension Plans for unpaid minimum funding contributions. PBGC also filed claims for premiums owed to PBGC.

---

[2] The Debtors' defined benefit pension plans are: The Exide Technologies Retirement Plan; The Exide Corporation (GBC) Pension Plan; The Exide Hourly Employees Pension Plan; The Exide Hourly Employees Pension Plan (UAW); The Exide Indiana Employees Pension Plan; The Exide Hamburg Pennsylvania Employees Pension Plan; The Exide Retirement Plan for the Benefit of Employees of Schuylkill Metals Corp.; The Exide Hourly Employees Retirement Income Security Plan; and The Exide IBT-Salina Employees Pension Plan.

5. Exide Technologies has stated that it has no present intention to terminate any of the Pension Plans. Second Amended Disclosure Statement For Debtors' Third Amended Joint Plan of Reorganization ("Disclosure Statement"), p. 85.

6. The Debtors have acknowledged that unless the Pension Plans have been terminated prior to the effective date of the POR, the liability of the Debtors and their controlled group under ERISA with respect to the Pension Plans will not be affected in any way by this reorganization proceeding, including discharge or release. Disclosure Statement, p.85.

7. Under the POR, each Holder of a Claim who has accepted the POR will be deemed to release the Debtors and, *inter alia*, their non-debtor affiliates from all obligations and liabilities relating in any way to the Debtors or Reorganized Debtors, POR, Art. X.C., and Holders of Claims will be enjoined from commencing any actions relating to obligations and liabilities that are released under the POR. POR, Art. X.H.

8. The Debtors have sent to PBGC a notice stating: "Under the terms of the Plan, your claim(s) against the Debtors are not impaired, and, therefore, pursuant to section 1126(f) of the United States Bankruptcy Code, you are deemed to have accepted the Plan." Notice of Non-Voting Status with Respect to Unimpaired Classed Deemed to Accept the Plan.

OBJECTION

The Debtors have stated that they do not intend to terminate the Pension Plans. Disclosure Statement, p. 85. The Debtors also have acknowledged that, absent a termination of the Pension Plans prior to the effective date of the POR, their obligations with respect to the Pension Plans, and the obligations of their controlled group, will not be affected by this reorganization proceeding. Disclosure Statement, p. 85.

Despite the foregoing, it is not clear that the obligation of the Debtors and their controlled group under ERISA are exempt from the broad release provided pursuant to the POR.[3] POR, Art. X.C. The PBGC objects to the release to the extent it affects the ERISA obligations.

To continue the Pension Plans, the Debtors must assume the statutory obligations arising under ERISA relating to the Pension Plans. Moreover, the release of non-debtor members of the Debtors' controlled group from liabilities relating to the Pension Plans violates section 524(e) of the Bankruptcy Code, 11 U.S.C. § 524(e), which provides that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." *See Lowenchuss v. Resorts International, Inc.*, 67 F.3d 1394, 1401-2 (9th Cir. 1995).

To the extent the POR alters the ERISA obligations of the Debtors and members of their controlled group with respect to the Pension Plans, the POR cannot be confirmed. On the other hand, if the Debtors do not intend the release contained in Article X.C. of the POR and the injunction contained in Article X.H. of the POR to apply to the ERISA obligations, then any confirmation order should make clear that confirmation of the POR does not affect such obligations.[4]

---

[3] As noted above, the release contained in Article X.C. applies to Holders of Claims who have accepted the POR. The Debtors have sent a notice to PBGC stating that its claims are unimpaired, and, therefore, PBGC is deemed to accept the POR

[4] PBGC has discussed this issue with the Debtors and has requested that the following language be included in any order confirming the POR:

> Notwithstanding any provision of the Disclosure Statement, Plan of Reorganization, or this Confirmation Order, any obligations with respect to the defined benefit pension plans sponsored by the Debtors, under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001-1461, will not be affected in any way by this proceeding.

CONCLUSION

The PBGC requests that the confirmation order specify that the Debtors' obligations under ERISA are not affected by the release. If the Debtors object to inclusion of such language, PBGC requests that confirmation of the POR be denied to the extent the POR limits the ERISA obligations of the reorganized debtors and members of their controlled group.

Respectfully Submitted,

Dated: Washington, D.C.
October 6, 2003

/s/ Stephen D. Schreiber

PENSION BENEFIT GUARANTY CORPORATION
Office of the General Counsel
1200 K Street, N.W., Suite 340
Washington, D.C. 20005-4026
(202) 326-4020 (Ext. 3754)
Fax No. (202) 326-4112
Emails: cooper.kenneth@pbgc.gov and efile@pbgc.gov
JAMES J. KEIGHTLEY
General Counsel
WILLIAM G. BEYER
Deputy General Counsel
STEPHEN D. SCHREIBER (SS 4058)
Assistant General Counsel
KENNETH J. COOPER (KC 8265)
Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of October, 2003, a copy of the foregoing Pension Benefit Guaranty Corporation's Objection to Confirmation of Debtors' Plan of Reorganization was served via electronic notice upon those parties registered and via FedEx, postage prepaid, on the following:

Office of the United States Trustee
844 King Street, Room 2207
Lockbox #35
Wilmington, DE 19801
Attn: Mark S. Kenney

Counsel to the Equity Committee
Reinhart Boerner Van Deuren S.C.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202
Attn: Mark L. Metz

Counsel to the Creditors Committee
Akin, Gump, Strauss, Hauer & Feld LLP
590 Madison Avenue
New York, NY 10122
Attn: Fred S. Hodera
Mary R. Masella

Counsel to the Prepetition Lenders
Shearman & Sterling LLP
599 Lexington Avenue
New York, NY 10022
Attn: Douglas P. Bartner
Marc B. Hankin

/s/ Margaret E. Drake
Attorney for Pension Benefit Guaranty Corp.