IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
EXIDE TECHNOLOGIES, et al.,[1]	)	Case No. 02-11125 (___)
	)	(Jointly Administered)
Debtors.	)	

MOTION FOR AN ORDER PURSUANT TO 11 U.S.C § 365(a) AUTHORIZING THE DEBTORS TO REJECT CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY

Exide Technologies and certain of its domestic subsidiaries, as debtors and debtors in possession (the "Debtors") in the above captioned cases, by and through their undersigned counsel, hereby move this Court pursuant to this motion (the "Motion") for the entry of an order, pursuant to 11 U.S.C. § 365 authorizing the Debtors to reject certain executory contracts and unexpired leases of nonresidential real property. In support of this Motion, the Debtors respectfully state as follows:

Jurisdiction

1. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (M) and (O).

2. Venue of these proceedings and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

---

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

3. The statutory predicates for the relief requested herein are sections 105(a) and 365 of title 11 of the United States Code (the "Bankruptcy Code").

4. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (M) and (O).

5. As there are no novel issues of law presented herein, the Debtors waive their right to file a brief in support of the Motion pursuant to D. DEL. LR 7.1.2(A), incorporated by reference into the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware by DEL. BANKR. LR 1001-(B). Because of the nature of the relief requested in this Motion, the Debtors assert that no briefing is required.

Background

6. On April 15, 2002 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). The Debtors continue in possession of their properties and are operating and managing their businesses as debtors and debtors in possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

7. No request has been made for the appointment of a trustee or examiner, and no official committee of creditors has been established in these cases.

Description of the Debtors

8. The Debtors and their non-debtor subsidiaries and affiliates[2] (collectively, "Exide") are the world-wide leading manufacturer and distributor of lead acid batteries and other related electrical energy storage products. Exide manufactures and distributes industrial and transportation batteries in North America, Europe, Asia, the Middle East, India, Australia, and New Zealand. As a result of recent acquisitions discussed below, Exide Technologies (formerly known as Exide Corporation) is the largest lead battery manufacturer in the world.

9. Exide's industrial batteries consist of motive power batteries, such as those for use in fork-lift trucks and other electrical vehicles, and network power batteries used for back-up power applications primarily for telecommunications and computer data centers. Exide distributes and markets its transportation batteries to a broad range of retailers, distributors of replacement or after-market batteries, and automotive original equipment manufacturers.

10. The Debtors have nineteen (19) manufacturing facilities in the United States and employ approximately 6,500 persons as of the Petition Date.

11. As of March 31, 2001, the Debtors, together with their non-debtor subsidiaries and affiliates, had consolidated assets with a net-book value of $2.1 billion and consolidated liabilities with a net-book value of $2.5 billion. Exide's net sales for fiscal year

---

2 Debtor Exide Technologies has European, Asian, Australian and New Zealand subsidiaries that are non-debtors and that conduct their operations throughout the world. None of Exide's direct or indirect foreign subsidiaries are debtors in the Chapter 11 Cases or in any related bankruptcy, reorganization, or liquidation proceeding.

ending March 31, 2001, were approximately $2.4 billion and are projected to be $2.5 billion for fiscal year ending March 31, 2002.

Corporate History and Structure of the Debtors

12. A chart setting forth the Debtors' corporate structure is annexed as Exhibit "A" to the Affidavit of Lisa Donahue, Chief Financial Officer and Chief Restructuring Officer of Exide Technologies, in Support of First Day Motions (the "Donahue Affidavit").

13. Debtor Exide Technologies is a Delaware corporation organized in 1966 and is a successor in interest to a New Jersey corporation originally founded in 1888. Exide's principal executive offices are located in Princeton, New Jersey. On August 10, 2001, Exide Technologies changed its name from Exide Corporation. Exide Technologies is the parent corporation of seven (7) direct North American subsidiaries three of which are also Chapter 11 debtors. Exide Technologies' common stock was historically traded on the New York Stock Exchange until February 15, 2002, when it was delisted. At present, the stock is now trading on the OTC Bulletin Board under the symbol "EXDT."

14. Three of the Debtors have little or no operations: (a) Exide Illinois, Inc., (b) Exide Delaware, L.L.C. and (c) RBD Liquidation, L.L.C.

15. On April 9, 2002, Exide Technologies and RBD Liquidation, L.L.C. f/k/a Royal Battery Distributors, L.L.C. ("RBD") completed the sale of all RBD's assets to an unrelated third party for $1,670,117.00 in cash paid at closing. In connection with the closing of the transaction, RBD filed a certificate of amendment with the Delaware Secretary of State changing its name to RBD Liquidation, L.L.C.

Description of Debtors' Indebtedness

16. As of March 31, 2001, the Debtors owed approximately $1,345 million to creditors including but not limited to: (a) not less than $430.4 million of secured debt owed to certain pre-petition lenders (excluding issued and undrawn letters of credit and the obligations of the non-debtor foreign subsidiaries of Exide in respect of which Exide and certain of its Debtor subsidiaries have issued secured guarantees), (b) $149 million of ordinary course trade payables, (c) $178 million under capitalized and operating leases, and (d) approximately $620 million of general unsecured debt excluding the amount described in clause (b) above which includes (i) $300 million of Senior Notes issued by Exide Technologies and (ii) approximately $318 million (accreted value) of 2.9% Convertible Senior Subordinated Notes issued by Exide Technologies.

A. The Secured Bank Debt

17. On December 19, 1997, Exide entered into a Credit and Guarantee Agreement with a group of banks including Credit Suisse First Boston as administrative agent (collectively, the "Pre-Petition Lenders"). On September 29, 2000, the Credit and Guarantee Agreement was amended for the primary purpose of providing additional financing for the purchase price to be paid by Exide in connection with the acquisition of GNB. The Credit and Guarantee Agreement was subsequently amended from time to time (together, the Credit and Guarantee Agreement and all amendments are referred to as the "Pre-Petition Credit Agreement").

18. The Pre-Petition Credit Agreement has three borrowing tranches: (a) a $150 million Term A loan; (b) a $500 million Term B loan; and (c) a $250 million revolving

credit facility (the "Revolving Facility"). The Revolving Facility includes a sub-facility for the issuance of up to $50 million of letters of credit. Debtor Exide Technologies is a borrower under the Pre-Petition Credit Agreement. Certain foreign, non-debtor subsidiaries of Exide are also borrowers under the Pre-Petition Credit Agreement. In addition, Debtor Exide Technologies and its subsidiaries, Debtors Exide Delaware, L.L.C. and RBD Liquidation, L.L.C. (together the "Domestic Debtor Subsidiaries") and non-debtor GNB Battery Technologies Japan, L.L.C. (together with the Domestic Debtor Subsidiaries, the "Domestic Subsidiary Guarantors") have guaranteed, subject in the case of the Domestic Subsidiary Guarantors to certain limitations set forth in Section 10.1 of the Pre-Petition Credit Agreement, all of the borrowings and other obligations of certain foreign, non-debtor subsidiaries of Exide Technologies which are also borrowers under the Pre-Petition Credit Agreement. The Domestic Subsidiary Guarantors have also guaranteed, subject to certain limitations set forth in Section 10.1 of the Pre-Petition Credit Agreement, all of the borrowings and other obligations of Debtor Exide Technologies under the Pre-Petition Credit Agreement.

19. The indebtedness under the Pre-Petition Credit Agreement and all related obligations (the "Pre-Petition Bank Obligations") are secured by: (i) substantially all the assets of Exide Technologies and the Domestic Subsidiary Guarantors; (ii) limited assets of certain foreign subsidiaries; and (iii) pledged stock of certain foreign subsidiaries of Exide Technologies. As of the Petition Date, the outstanding aggregate principal amount of the Pre-Petition Bank Obligations was not less than approximately $692.6 million and issued and

undrawn letters of credit having an aggregate maximum exposure of approximately $31.95 million.

20. The Pre-Petition Credit Agreement contains certain financial covenants. Exide has obtained waivers from the Pre-Petition Lenders with respect to non-compliance with certain of these covenants as described more fully below.

B. <u>The Unsecured Bond Debt</u>

21. The Debtors' general unsecured debt includes (a) $300 million of 10% Senior Notes issued by Exide Technologies in April 1995 (the "Senior Notes") and (b) 2.9% Convertible Senior Subordinated Notes issued by Exide Technologies with an original face amount of approximately $397 million issued in December 1995 (the "Subordinated Notes").

22. The Senior Notes have an aggregate outstanding principal amount equal to $300 million. Interest on the Senior Notes is payable in cash on April 15 and October 15 of each year. The Senior Notes are unsecured senior obligations of Exide Technologies and are not guaranteed by any domestic or foreign subsidiaries.

23. As of December 31, 2001, the Subordinated Notes have an aggregate, accreted, outstanding amount equal to $318 million. Cash interest on the Subordinated Notes is payable on June 15 and December 15 of each year. The Subordinated Notes are subordinated obligations of Exide Technologies and are not guaranteed by any domestic or foreign subsidiaries, and rank junior to the Pre-Petition Bank Obligations and the Senior Notes and are senior to, or *pari passu* with, all other indebtedness of the Debtors.

24. In 2001, the Debtors began preliminary discussions concerning the status of the company with an ad hoc committee of certain large holders of the Senior and Subordinated Notes (the "Informal Committee of Noteholders"). The Informal Committee of Noteholders has retained counsel and financial advisers and Exide has been cooperating with due diligence requests from this constituency.

C. The U.S. Securitization

25. In addition to its secured credit and unsecured debt facilities, the Debtors also participate in a securitization facility with respect to its domestic receivables (the "U.S. Securitization Facility").[3] Under this facility, Exide sells certain receivables on a continuous basis to Exide U.S. Funding Corportion, a non-debtor affiliate. Exide U.S. Funding resells such receivables to a third-party. The maximum amount that may be outstanding under the U.S. Securitization Facility at any point in time is $200 million.

26. In the month preceding the Petition Date, because the Debtors are fully drawn on their other credit facilities, the U.S. Securitization Facility has been the only material source of liquidity for the Debtors' operations.

Factors Leading to the Commencement of the Debtors' Chapter 11 Cases

27. Lead acid batteries are manufactured, distributed and marketed in a highly competitive environment. Beginning in mid-2001, the Debtors experienced increased competitive pressures and a downturn in general economic conditions, shrinking sales in the

---

[3] Exide has also established a separate $175 million securitization facility for its foreign subsidiaries.

battery manufacturing industry, and raw material price increases. These factors, combined with an overhead structure that was not adjusted to reflect declining trends, created downward pressure on earnings.

28. As a result, during the fourth calendar quarter of 2001, the Debtors determined that they would not be able to comply with certain financial covenants in the Pre-Petition Credit Agreement. To address these problems, the Debtor Exide negotiated with the Pre-Petition Secured Lenders the Third Amendment and Waiver to the Pre-Petition Credit Agreement and other loan documents dated December 28, 2001. In the Third Amendment, the Pre-Petition Secured Lenders waived Exide's compliance with certain covenants and any defaults resulting from such non-compliance through April 12, 2002.

29. During March of 2002, the Debtors determined that they would not be able to make the payments of principal and interest due on March 28 and April 4, 2002 respectively. To address these problems, the Debtors negotiated with the Pre-Petition Lenders the Fourth Amendment and Waiver to the Pre-Petition Credit Agreement dated March 28, 2002. In the Fourth Amendment, the Pre-Petition Lenders extended the due date for such payments to April 15, 2002. The Pre-Petition Lenders' waiver of Debtors' compliance with certain covenants and any defaults resulting from such non-compliance was extended through April 15, 2002.

30. Moreover, an approximately $15 million interest payment on the Senior Notes was due on April 15, 2002. Notwithstanding the Debtors' efforts to improve liquidity, the Debtors did not have sufficient funds to make this interest payment. The Debtors' default on the

Senior Notes would result in cross-default in the U.S. Securitization Facility, effectively eliminating the Debtors' last source of cash to operate.

31. After consideration of all reasonably available alternatives, and in light of the Debtors' liquidity crisis, the Debtors determined that the voluntary commencement of these Chapter 11 Cases would provide them with sufficient breathing space to enable them to restructure their financial affairs and reorganize their businesses for the benefit of all their creditors.

Relief Requested

32. In connection with their efforts to reduce costs and formulate a workable business plan centered on consolidated operations, the Debtors have evaluated certain executory contracts and nonresidential real property leases in the locations where the Debtors operate. The Debtors have identified locations that are not in the Debtors ongoing business plan and that will not be a part of their restructuring. Likewise, the Debtors have identified contracts that are not essential to the Debtors' business. Accordingly, the Debtors seek authority to reject the executory contracts and unexpired leases of nonresidential real property associated with such locations, a list of which is attached hereto as Exhibit A and as Exhibit A to the form of proposed order (collectively, the "Rejected Contracts and Leases").

Basis for Relief

33. Section 356(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may ... reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). "This provision allows a trustee to relieve the

bankruptcy estate of burdensome agreements which have not been completely performed." Stewart Title Guaranty Co. v. Old Republic National Title Company, 83 F.3d 735, 741 (5th Cir. 1996) *citing*, In re Muerexco Petroleum, Inc., 15 F.3d 60, 62 (5th Cir. 1994). The decision to assume or reject an executory contract or unexpired lease is a matter within the "business judgment" of the debtor. See National Labor Relations Board v. Bildisco (In re Bildisco), 682 F.2d 72, 79 (3rd Cir. 1982) ("The usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the 'business judgment' test"); In re Buckhead America Corp. 180 B.R. 83(D. Del. 1995); and In re Taylor, 913 F.2d 102 (3rd Cir. 1990). The business judgment standard mandates that a court approve a debtor's business decision unless the decision is in bad faith, whim or caprice. See Lubrizol Enters v. Richmond Metal Finishes, 756 F.Zd 1043, 1047 (4th Cir. 1980), cert. denied, 475 U.S. 1057 (1986). Further "[t]his provision allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed." Stewart Title Guaranty Co. v. Old Republic National Title Company 83 F.3d 735, 741 (5th Cir. 1996) citing In re Murexco Petroleum Inc., 15 F.3d 60, 62 (5th Cir. 1994).

34. The Debtors presently are engaged in a restructuring and reconfiguration of their business. The Debtors have evaluated each of the Rejected Contracts and Leases and, in the exercise of their business judgment, the Debtors have determined that the Rejected Contracts and Leases are not useful for their ongoing operations. Therefore, the Debtors seek to reject the Rejected Contracts and Leases pursuant to section 365(a) of the Bankruptcy Code with such rejection to be effective as of the Petition Date.

35. After reviewing and assessing the terms of the Rejected Contracts and Leases, the Debtors determined that these agreements have little, if any, value to the estates given the nature of the leases and contracts, the remaining term of the leases and contracts, and in the case of an unexpired lease, the markets in which the space is located. Due in part to the continuing burden the Debtors face as a result of the administrative expenses that might arise under the Rejected Contracts and Leases, the Debtors have determined that attempting to market and sell the leases or to assign the contracts would be significantly more costly than any potential value that might be realized by any future sale, assignment or sublease.

36. If the relief requested in the Motion is granted, the Debtors will save approximately $150,000 per month in contract and lease costs that arise under the Rejected Contracts and Leases. Accordingly, the Debtors, in the exercise of their business judgment, have determined that it is in the best interests of the Debtors' creditors and estates to reject all of the Rejected Contracts and Leases.

37. The Debtors may have claims against a contract counter-party or lessor arising under, or independently of, any contract or lease rejected hereby. The Debtors do not waive such claims by the filing of this Motion or by the rejection of any such rejected contract or lease.

38. In light of the urgent need to reject the Rejected Contracts and Leases to avoid unnecessary administrative expenses, the Debtors request that the Court enter an order approving the rejection of all of the Rejected Contracts and Leases as of the Petition Date. Upon information and belief, the Debtors have no personal property remaining at any of the real

property locations covered by the Rejected Contracts and Leases. To the extent the Debtors in fact have any property at any of the locations, the Debtors will remove such property or in the alternative seek authority to abandon such property.

No Prior Request

39. No prior Motion for the relief requested herein has been made to this or any other court.

Notice

38. Notice of this Motion has been given to (a) the Office of the United States Trustee, (b) the counsel for the Pre-Petition Lenders and post petition lender and (c) counsel for the Informal Committee of Noteholders. Upon entry of the Order granting the relief requested in the Motion, notice of entry of the Order will be provided to the forty (40) largest unsecured creditors, all parties who have requested notice pursuant to Bankruptcy Rule 2002, and the non-debtor parties to the leases and contracts to be rejected. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

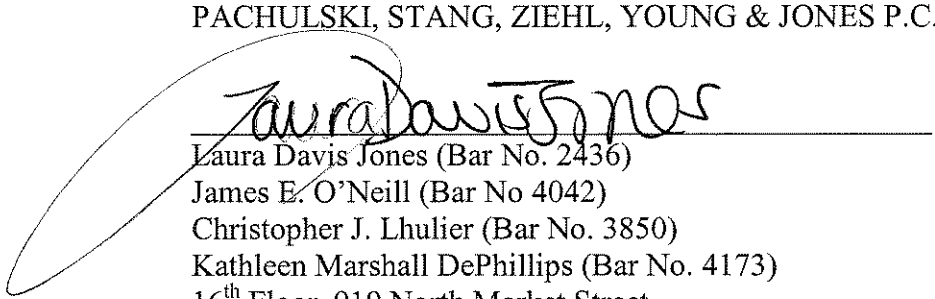
WHEREFORE, the Debtors respectfully request that the Court enter an order (i) authorizing the Debtors to reject each of the Rejected Contracts and Leases as provided herein and (ii) granting such other relief as is just and proper.

Dated: April 15, 2002

KIRKLAND & ELLIS
Matthew N. Kleiman
Kirk A. Kennedy
200 East Randolph Drive
Chicago, IL 60601
Telephone: (312) 861-2000
Facsimile: (312) 861-2200

-and-

PACHULSKI, STANG, ZIEHL, YOUNG & JONES P.C.



Laura Davis Jones (Bar No. 2436)
James E. O'Neill (Bar No 4042)
Christopher J. Lhulier (Bar No. 3850)
Kathleen Marshall DePhillips (Bar No. 4173)
16th Floor, 919 North Market Street
P.O. Box 8705
Wilmington, DE 19899-8705 (Courier 19801)
Telephone: (302) 652-4100
Facsimile: (302) 652-4400

[Proposed] Co-Counsel for the
Debtors and Debtors in Possession