IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

	:	Chapter 11
In re	:	
	:	Case No. 02-11125 (KJC), et seq.
EXIDE TECHNOLOGIES, et al.,[1]	:	(Jointly Administered)
	:	
Debtors.	:	**Objections due by: August 12, 2003 at 4:00 p.m.**
	:	**Hearing Date: August 19, 2003 at 9:30 a.m.**

MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AN ORDER STAYING PROCEEDINGS ON THE DEBTORS' PLAN OF REORGANIZATION AND DISCLOSURE STATEMENT OR, ALTERNATIVELY, TERMINATING THE DEBTORS' EXCLUSIVE PERIODS TO FILE AND SOLICIT ACCEPTANCES OF A PLAN

**TO THE HONORABLE KEVIN J. CAREY,
UNITED STATES BANKRUPTCY JUDGE:**

The Official Committee of Unsecured Creditors (the "Committee") of Exide Technologies ("Exide") and its related debtors and debtors-in-possession in the above captioned cases (collectively, the "Debtors"), by and through its undersigned counsel, hereby submits this motion (the "Motion") seeking an order of the Court (i) staying proceedings on the Debtors' plan of reorganization (a "Plan") and the Debtors' disclosure statement (the "Disclosure Statement"); (ii) re-scheduling the hearing on the Disclosure Statement to a date no sooner than December 31, 2003 or the completion of the Pending Litigation (as defined below); or, in the alternative, (iii) terminating the Debtors' exclusive periods (the "Exclusive Periods") to file and solicit acceptances of a Plan pursuant to section 1121 of the Bankruptcy Code, to permit the Committee to file an alternative Plan. In support of the Motion, the Committee respectfully represents as follows:

[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.

PRELIMINARY STATEMENT

1. The Committee requests that the Court stay all proceedings related to the Debtors' proposed Plan and the Disclosure Statement or re-schedule the hearing on the Disclosure Statement for a date no earlier than December 31, 2003 or the completion of the Pending Litigation. Most critically, the Committee firmly believes that the filing of a Plan and/or the Disclosure Statement at this time is premature and contrary to the best interests of the Debtors, their estates and their overall creditor body. Aside from the fact that the Debtors simply are not ready to emerge from bankruptcy, the Committee's litigation against the Debtors' pre-petition banks (the "Pre-Petition Banks"), which challenges the amount, status and nature of the Pre-Petition Banks' claims, is still pending before this Court (the "Pending Litigation") and discovery has been blocked or stayed since the litigation was filed. Until the Pending Litigation is resolved, the status and amount of the Pre-Petition Banks' claims will not be known and, therefore, a proper determination of appropriate distributions can not be made. Accordingly, the Debtors' proposed Plan, which allocates effectively all of the value of the reorganized company to the investors in the Pre-Petition Banks' claims, cannot be confirmed.

2. The Debtors' proposed Plan also cannot be confirmed because it provides for a "settlement" of the Pending Litigation, which "settlement" has not been agreed to by– never mind negotiated or even discussed with—the Committee. At the inception of these cases, the Debtors waived their right to pursue all actions against the Pre-Petition Banks, leaving such actions to the Committee and other parties in interest to pursue. Thus, it is the Committee, not the Debtors, that has been authorized to, and has, prosecuted this Pending Litigation. To avoid the costly waste of time and effort, all proceedings related to the Plan and the Disclosure Statement must be stayed because the Committee has not agreed to this "settlement."

3. It is unfathomable that the Debtors proposed a Plan which was not negotiated with the Committee but was negotiated with the investors in the Pre-Petition Banks' claims and the Pre-Petition Banks, the defendants in the Pending Litigation. Even worse is the proposed Plan itself which effectively gives the reorganized company to the Pre-Petition Banks (and the investors in the Pre-Petition Banks' claims) while virtually wiping out the interests of all other creditors. This attempt to squelch the Pending Litigation outside the context of the adversary proceeding and to disregard the interests and rights of any other party can not be countenanced. The Court cannot allow the Debtors, the investors in the Pre-Petition Banks' claims, and the Pre-Petition Banks to steamroll these cases through confirmation.

4. If the Court does not stay or reschedule the proceedings related to the Debtors' proposed Plan and/or the Disclosure Statement, the Committee requests that the Exclusive Periods be terminated to permit the Committee to propose and pursue an alternative Plan. The Debtors' proposed Plan is not in the best interests of all creditors. Thus, the Committee must be allowed to present an alternative Plan to reintroduce balance and fairness to the process being pushed by the Debtors. If the Exclusive Periods are terminated, the Committee anticipates filing an alternative Plan that will maximize the value of the Debtors' estates and allocate value fairly among all creditors. Such alternative Plan will likely be based upon the draft term sheet attached as **Exhibit A**.

5. Despite the Pending Litigation, the Debtors' proposed Plan transfers virtually all of the value of the Debtors' businesses to the Pre-Petition Banks, leaving practically nothing for the more than $1 billion of claims held by the Debtors' diverse unsecured creditors. The Debtors' Plan does, however, grant some real value to two other groups: the Debtors' management and outside professionals. Under their Plan, the Debtors' management team will

receive significant value in the form of bonuses, stock grants and/or stock options and, if their Plan is confirmed promptly, ensures payment in full of "success" bonuses for the relevant Debtors' professionals.

6. The Pre-Petition Banks will achieve this extraordinary result of grabbing almost all of the company's equity value based on an artificially low valuation of Exide's business. If the Debtors' management and the Pre-Petition Banks have their way, the valuation would be assessed at a time when Exide has yet to complete, let alone realize the benefits of, the operational restructuring for which Chapter 11 is designed. In addition, this valuation would be done at a time when the Debtors' businesses and markets, although showing the early signs of a recovery, have yet to rebound.

7. Finally, the Debtors and the Pre-Petition Banks are attempting to silence all of the other constituencies in these cases and to evaporate their alternatives. In addition to not negotiating with any other parties before filing their Plan, the Debtors, the investors in the Pre-Petition Banks' claims and the Pre-Petition Banks are attempting to manipulate the process by imposing an artificial timetable on these cases. If the Debtors are allowed to proceed, there is precious little time for any other parties in interest in these cases to present an alternative Plan unless the Exclusive Periods are terminated immediately.

BACKGROUND

8. On April 15, 2002 (the "Original Petition Date"), Exide Technologies, Exide Delaware, L.L.C., Exide Illinois and RBD Liquidation, L.L.C. (the "Original Debtors") filed voluntary petitions for relief under Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). On November 21, 2002 (the "Additional Petition Date"), Dixie Metals Company and Refined Metals Corporation, each an affiliate of the Original Debtors (the

"Additional Debtors"), filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. An order consolidating the cases of the Original Debtors and the Additional Debtors was entered by the Court on November 29, 2002.

9. The Debtors continue in possession of their properties and are operating and managing their businesses as debtors and debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 cases.

10. On April 29, 2002, the Office of the United States Trustee appointed the Committee. The Committee selected Akin Gump Strauss Hauer & Feld LLP and Pepper Hamilton LLP as co-counsel.

11. In the initial months of these cases, the Debtors proposed retention applications for two of its professional advisors, AlixPartners, LLC and The Blackstone Group, L.P., and each contained a provision for a "success" bonus which is triggered by specific events. At the insistence of the Pre-Petition Banks, the payment of these bonuses is, in each case, tied to the Debtors' confirming a Plan before (a) December 18, 2003 or (b) if the current termination date (December 18, 2003) of the Standstill Agreement (the "Standstill Agreement") is extended, the termination date of such agreement (collectively, the "Termination Date"). The Standstill Agreement relates to the rights of the Pre-Petition Banks to enforce their rights and remedies under the Debtors' pre-petition credit agreement but only as those rights and remedies relate to foreign, non-debtor affiliates of Exide. Upon information and belief, because of a "true up" provision in the pre-petition credit agreement as well as the way in which this debt trades in the capital markets, each investor in the pre-petition bank debt effectively holds a beneficial interest

in both the debt borrowed by the Debtors and the debt borrowed by the Debtors' foreign, non-debtor affiliates under the pre-petition bank facility.

12. In the initial months of these cases, the Debtors also proposed a key employee retention plan that established bonuses for certain employees. These bonuses are divided into four payments, and each payment is tied to the achievement of established performance goals. If the goal is not met, the employees do not receive any of the relevant payments. Again at the insistence of the Pre-Petition Banks, the final goal under this retention plan is the Debtors' confirmation of a Plan before the Termination Date. In addition, the Chief Executive Officer of Exide (the "CEO") will receive a supplemental bonus of $1 million, which was proposed and advocated by the Pre-Petition Banks, if this final goal is met.

13. On September 23, 2002, the Court ordered the appointment of the Official Committee of Equity Holders.

14. On January 16, 2003, the Committee initiated the Pending Litigation.[2] From that day forward, the Pre-Petition Banks opposed the immediate and full discovery litigants are entitled to under the Bankruptcy Rules, arguing that discovery should be stayed pending ruling on their motion to dismiss but simultaneously claiming that the Pending Litigation -- and these bankruptcy proceedings -- would have to conclude by the fall of 2003. The Committee vigorously opposed this position for fear that an inability to take real discovery on that short timetable would be unduly prejudicial and a violation of due process.

[2] The Pending Litigation arises from the inequitable and improper conduct and actions of the Pre-Petition Banks and their agents beginning with the ill-fated acquisition of Pacific Dunlop's GNB Corporation in the fall of 2000 and extending through their manipulation of the Debtors' bankruptcy filing, including the Pre-Petition Banks' designation of which entities in the Exide corporate family would file for bankruptcy in an effort to (i) ensure that the Pre-Petition Banks maximized their recovery from the value of the Debtors' non-debtor affiliates to the detriment of unsecured creditors and (ii) maximize their leverage in these cases, particularly in the form of the Standstill Agreement.

15. At the March 26, 2003 Omnibus Hearing, the Court heard argument on the issue of a discovery stay. The Debtors objected, in open court, to having to produce any documents in the Pending Litigation. The Court ruled that only certain limited document discovery could go forward with respect to the defendant banks and the Debtors. All non-party discovery, deposition discovery, and expert discovery was stayed.

16. On April 4, 2003, the Debtors filed their third, and most recent, motion seeking to extend the Exclusive Periods (the "Third Extension Motion"). In such motion, the Debtors acknowledged the Committees' right to seek to terminate the Debtors' Exclusive Periods.

17. On April 15, 2003, the Committee filed a pleading supporting the Debtors' Third Extension Motion primarily because the Committee believed that the Debtors have considerably more to do in their restructuring. Accordingly, in such pleading, the Committee reiterated its position that the Debtors should remain in bankruptcy, under the protection of Chapter 11, beyond the end of this year and that the only party in interest that may benefit from a premature exit from Chapter 11 is the Pre-Petition Banks. The Committee noted that, to the extent that the Debtors emerge from bankruptcy in the near term, the Pre-Petition Banks are likely to gain control of the "reorganized" post-Chapter 11 entity, reaping all of the value as the Debtors' businesses subsequently realize the benefits of their restructuring efforts.

18. On April 22, 2003, this Court approved the Third Extension Motion. As a result, the Debtors currently have the exclusive right to file a Plan until August 7, 2003 and to solicit acceptances thereto until October 7, 2003. At that hearing, after extensive oral argument on the Pre-Petition Banks' motion to dismiss, the Court made a cautionary statement on the

record regarding the interplay between the Pending Litigation and the potential end of these bankruptcy proceedings:

> But I guess if you assume, and I haven't decided, but if you assume that at least something survives the motion to dismiss, we go onto the next stage, and I also assume that given the stakes involved, without some kind of consensual arrangement for a plan, we go next to summary judgment, and then if we get past that, if , you know, we get to trial. So, I guess I just point out the obvious to the parties that to the extent that it's in their view that there is a thought that there could be some consensual plan at some point, I encourage them to begin or resume or add a little intensity to their talks because this litigation track is going to—it just seems to me it's inevitable it's going to push against or go beyond the December date that's so important to some of the parties in this bankruptcy.

19. Based on the Court's comments that day, and earlier statements that the Committee would be allowed to conduct discovery and not be deprived of its due process rights, the Committee has agreed to give extensions of time to the Pre-Petition Banks and the Debtors for responses to the limited discovery requests that the Committee has been permitted to serve. Thus, even with respect to the limited discovery that is pending, there have been significant delays.

20. The Debtors and the Pre-Petition Banks continue to assert, as they each have time and again over the last year, that the Debtors must exit from bankruptcy before the end of 2003, and both parties are proceeding on this timetable. The reasons for these assertions are stated to be (i) that the Standstill Agreement terminates in December 2003; (ii) that forecasts or statements made by the Company to customers and suppliers have mentioned such a timetable; and (iii) management's desire to complete this bankruptcy process. However, all of these concerns are solely within the control of these two parties, and do not present obstacles that can not be otherwise addressed.

21. On July 10, 2003, the Debtors filed a proposed Plan. Such Plan allocates 99% of the value of the reorganized Debtors to the Pre-Petition Banks and notes that the management team will receive an as yet unannounced percentage of the value in the form of stock grants and/or options. Thus, this proposed Plan allocates less than 1% of the fully diluted equity of the reorganized Debtors to unsecured creditors, who hold in excess of $1 billion in claims.

22. On July 24, 2003, the Debtors filed an amended Plan and the Disclosure Statement. A hearing on the Disclosure Statement is currently scheduled for August 25, 2003, and objections to the Disclosure Statement are due on August 19, 2003.

ARGUMENT

I. The Plan process must be stayed.

23. The Court must stay all proceedings related to the Debtors' proposed Plan and Disclosure Statement or reschedule the hearing on the Disclosure Statement for a date no earlier than December 31, 2003 or the completion of the Pending Litigation. Until the Pending Litigation is resolved, the status and amount of the Pre-Petition Banks' claims will not be known. Without this information, it is impossible to fairly allocate value, and thus, structure distributions, among the various creditors. Therefore, the Debtors' Plan, which simply assumes the validity and secured status of the Pre-Petition Banks' claims, cannot be confirmed. Indeed, no Plan can be confirmed until the Pending Litigation is completed.

24. Moreover, it was the Committee—not the Debtors—who satisfied its fiduciary duties and conducted an in-dept investigation and analysis of the Pre-Petition Banks' actions, purported claims and liens. The Debtors waived their right to pursue any actions or claims against the Pre-Petition Banks at the very outset of these cases in connection with the

negotiation of the adequate protection package the Debtors granted to the Pre-Petition Banks. Since that time, the Debtors have taken the position, in Court and otherwise, that the Debtors are not involved in the Pending Litigation and that this adversary proceeding is between the Pre-Petition Banks and the Committee (and other parties in interest). Thus, it can only be the Committee that can properly prosecute such claims and make any determinations regarding a settlement.

25. The Committee can not be railroaded into involuntarily "settling" its litigation by the Debtors' mere insertion of a settlement provision into its proposed Plan. This purported "settlement" is so unreasonable and inequitable that it should not even be labeled a "settlement" as it provides no meaningful distribution to unsecured creditors while releasing all of the claims against, and allocating almost all of the value to, the Pre-Petition Banks.

26. The Committee has not agreed to settle its pending litigation against the Pre-Petition Banks. Indeed, the Committee has not even been approached by the Pre-Petition Banks to discuss a settlement, notwithstanding the Court's suggestions at the April and June Omnibus Hearings that the parties increase their intensity in discussions of a consensual plan or else face a litigation that would go beyond December. The Debtors' proposed Plan treats the measly recovery allocated to the unsecured creditors as their "payment" for this litigation. This treatment apparently has been determined, in part, by the defendant in the litigation in a conspiratorial manner consistent with the allegations raised in the Pending Litigation. But most importantly, no meaningful discovery has taken place to date. It is only after conducting such discovery that any "neutral" party could begin to place a real value on the Pending Litigation. As the Committee cannot be forced to settle its litigation on this record and at this stage, the Debtors' proposed Plan cannot be confirmed and therefore, should not be prosecuted.

27. Thus, it is simply premature for the Debtors to have negotiated or filed their Plan. To begin the march towards confirmation at this time is simply setting the stage for a bitterly contested and unnecessarily time consuming and expensive confirmation process, which will prove to be for naught. As Judge Walsh reasoned in Loewen Group International, Inc. et al. chapter 11 case (No. 99-1244) and in Fruit of the Loom, Inc., et al. chapter 11 cases (No. 99-4497), when a serious issue is presented, such as a litigation to determine, among other things, the secured status of a major constituency, it ought to be decided first, so that that the confirmation process is not wasted.

28. The fact that the Debtors and the Pre-Petition Banks have negotiated this proposed Plan, without benefit of input from other parties in interest, including fiduciaries such as the Committee, and at a time when the Committee's litigation is still pending against the Pre-Petition Banks is shocking. That the Debtors propose to give the Pre-Petition Banks almost all of the equity value of the reorganized company before the validity of the banks' claims are determined in the litigation is appalling. The Pre-Petition Banks have fought vigorously to keep the Pending Litigation from moving forward at full speed (by resisting discovery and otherwise), and now, through the Debtors' proposed Plan, they are attempting to, effectively, dismiss the Pending Litigation, denying the Committee its right to due process.

29. The Court can not allow the Debtors' management and the Pre-Petition Banks to steamroll these cases forward, disregarding the rights and interests of all other parties. This is all the more true considering that it is only these parties who benefit from such a result.

II. Alternatively, the Exclusive Periods must be terminated immediately to allow the Committee to file an alternative Plan.

A. The Standard for Terminating Exclusivity

30. Section 1121 of the Bankruptcy Code provides that, except as otherwise provided, only the debtor may file a Plan for the initial 120-days following the date of the filing of a Chapter 11 petition for relief. 11 U.S.C § 1121(b). If a Plan is filed within the 120 day period, such exclusive period is extended to 180 days to provide the debtor the opportunity to solicit acceptances to such plan. 11 U.S.C. § 1121(c). Section 1121(d) further provides as follows:

> On request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

Section 1121(d) provides great latitude to the bankruptcy courts in deciding, on a case-by-case basis, whether to extend or reduce the exclusivity periods. In re Lake in the Woods, 10 B.R. 338, 344-345 (E.D. Mich. 1981).

31. Section 1121 of the Bankruptcy Code "represents a congressional acknowledgement that creditors, whose money is invested in the enterprise no less than the debtor's, have a right to a say in the future of that enterprise." In re Timbers of Inwood Associates, Ltd., 808 F.2d 363, 372 (5th Cir.1987) (citing the legislative history of section 1121). The Timbers Court added that the bankruptcy courts should not only be "mindful of the legislative goal behind [Section] 1121," but also "avoid reinstituting the imbalance between the debtor and its creditors that characterized proceedings under the old Chapter XI." Id. Terminating a debtor's exclusivity and "granting …. authority to creditors to propose plans of reorganization and rehabilitation serves to eliminate the potential harm and disadvantages to

creditors and democratizes the reorganization process." In re Kun, 15 B.R. 852, 853 (Bankr. D. Ariz. 1981) See e.g., In re Crescent Beach Inn, Inc., 22 B.R. 155, 160 (Bankr. D. Me. 1982) (shortening the relevant exclusive period to allow creditors to file a competing plan).

32. When plan negotiations have failed to render a consensus, it is appropriate to terminate exclusivity to rebalance the negotiation process. See e.g., In re All Seasons Industries, Inc., 121 B.R. 1002, 1006 (Bankr. N.D. Ind. 1990). Continuing the exclusivity of the debtor would result in the debtor continuing to hold creditors hostage and pressuring them into accepting an unsatisfactory plan. Id. See e.g., In re Sharon Steel Corp., 78 B.R. 762, 763 (Bankr. W.D. Pa. 1987).

33. Section 1121(b) represents a compromise of competing interests because, by granting the debtor a limited period of exclusivity for filing a plan of reorganization, the Bankruptcy Code seeks to balance the relative negotiating positions of the debtor and the creditors. In re Pine Trust, Inc., 67 B.R. 432, 434 (Bankr. E.D. Pa. 1986). "The take-it-or-leave-it attitude on the part of debtors as permitted by Chapter XI is fraught with potential abuse." Id.

B. The Debtors' Exclusive Periods should be terminated immediately

34. Sufficient cause exists for this Court to terminate the Exclusive Periods immediately, permitting the Committee to file and pursue an alternative Plan of Reorganization. The Committee must have the opportunity to present an alternative Plan to the one proposed by the Debtors in order to reintroduce balance and fairness to the process being pushed by the Debtors and the Pre-Petition Banks. The Debtors' management and the Pre-Petition Banks (along with the investors in their claims) simply can not be allowed to run this process unchallenged.

35. After three extensions of exclusivity, the Debtors finally filed a proposed Plan on July 10, 2003, less than four months before the Debtors insist that they must exit from bankruptcy. Outrageously, this proposed Plan allocates effectively all of the value in the restructured Debtors to the Pre-Petition Banks, the other party adamant for a premature exit from bankruptcy. The Debtors proposed Plan also provides significant benefits to the Debtors' management in the form of stock grants and/or stock options in the restructured Debtors as well as ensuring that the management team will receive their final bonuses under the key employee retention plan, including the $1 million supplemental bonus for the CEO, if the Plan is confirmed quickly. In addition, if the proposed Plan is confirmed quickly, it ensures the payment of the full amount of the "success" bonuses to certain of the Debtors' professional advisors.

36. Despite having had the exclusive right for over 15 months to develop and negotiate a Plan with all of the parties in interest, no meaningful negotiation has occurred with the Committee, or to the Committee's knowledge, any other party except for the Pre-Petition Banks and the investors in the Pre-Petition Banks' claims. In fact, a mere 72 hours before filing their proposed Plan, the Debtors presented a summary term sheet, not even a draft of the Plan, to the Committee. This timing, combined with the manner in which the terms were presented, provided the Committee with no real opportunity to engage the Debtors in negotiations regarding the terms of the Plan. On the other hand, the Debtors clearly had been developing this Plan, and negotiating it with the Pre-Petition Banks, long before even the term sheet was shown to the Committee.

37. This two party negotiation occurred, and is occurring, at a time that the Committee continues to litigate the very nature of the Pre-Petition Banks' claims, including their purportedly secured status. If the Committee is permitted to present an alternative Plan, the

Committee will include a mechanism in such Plan that will permit this Pending Litigation to be concluded properly and in a manner consistent with due process.

38. Given the timetable for these cases that the Debtors and the Pre-Petition Banks are advocating, there is very little time for other parties to present an alternative Plan unless the Exclusive Periods are terminated immediately. If the periods are not terminated, the Debtors' Exclusive Periods continue until October 7, 2003, approximately one month before the Debtors want to exit from bankruptcy. Thus, the Debtors will attempt to use the Exclusive Periods as a weapon to railroad all other parties into accepting their proposed Plan.

39. Indeed, this timetable, which was arbitrarily created by the Pre-Petition Banks and acceded to by the Debtors, is being used as a hammer to compel all of the other parties in interest to submit to the will of the Pre-Petition Banks and the Debtors. With respect to the claim that this timetable is inflexible, the Committee has asked both the Pre-Petition Banks and the Debtors' management if they have made any effort to extend the termination date of the Standstill Agreement but the Committee has not received a satisfactory response. Given that the Standstill Agreement already has been amended four times in the last year for other reasons and that the investors in the Pre-petition Banks' claim appear ready to accept a full equalization of their claim, it is surprising that they would not agree to an extension of the Standstill Agreement, which may lead to a better recovery.

40. Although the Committee has vociferously stated its opposition to this timetable, the Debtors refuse to take any steps to alter it and actually, have taken affirmative steps to show their commitment to it, including their furious efforts to push through a Plan confirmation process regardless of actual obstacles, like Pending Litigation or procedural

fairness. Having established a framework that has the Debtors emerging from bankruptcy prematurely, the rest of the constituencies are required to make decisions in a skewed context.

41. Most notably, the Debtors' management and the Pre-Petition Banks are forcing this company's hasty exit so that the valuation of the enterprise will be assessed at a time when the Debtors' business has not yet realized all of the benefits of its restructuring and the Debtors' industry and markets, although showing the early signs of a recovery, remain depressed. As a result, the Debtors' Plan is premised upon an artificially low valuation of their business.

42. This attempt to squeeze out all of the other parties in interest is not surprising given the nature of the parties who constitute a majority of the Pre-Petition Bank group. The majority of the Pre-Petition Banks' claims are now held by distressed investors, not traditional bank lenders. These investors typically expect, and structure their investments to achieve, an equity-style recovery on their claims. By forcing the Debtors to exit prematurely, they are attempting to force the Debtors to propose a Plan at a time that the deemed equity value of the enterprise is artificially deflated. Thus, these "banks" are grabbing 99% of the equity value for themselves so that they can realize all of the value inherent in the equity.

43. One of the underlying premises in the proposed Plan is that the reorganized enterprise will have an unreasonably low debt level. Such a notion clearly is driven by the fact that the investors in the Pre-Petition Banks' claims and the management team, who are, together, looking to receive effectively all of the stock of the reorganized company, do not want any significant debt ahead of them in the priority scheme. Moreover, the artificially low debt level would result, immediately after confirmation of the Plan, in an extraordinarily high valuation of such stock -- not a bad deal for parties who traditionally buy distressed bank debt

with the hope of making an equity-style return on their investment. Thus, as designed, the Pre-Petition Banks (and the investors in their claims) will receive in excess of the allowed amount of their claims in the form of valuable stock, while unsecured creditors will be effectively wiped out.

44. Thus, the Committee must be allowed to present an alternative Plan to rebalance these cases. At a minimum, authorizing the Committee to file a Plan will give the unsecured creditors a voice in this process and a real opportunity to participate, where such opportunity has been absent to date. If the Committee is allowed to present an alternative Plan, perhaps substantive negotiations can occur among the parties.

45. If the Exclusive Periods are terminated and the Committee is permitted to file an alternative Plan, the Committee will endeavor to expeditiously file such Plan, which will likely be based upon the draft term sheet attached hereto as Exhibit A. Such alternative Plan will include a more typical capital structure for the reorganized Debtors, one that is reasonably leveraged with debt and which uses the remaining equity to provide a fully valued return to all creditors, including the unsecured creditors.

46. By filing a proposed Plan so late, not engaging in any real negotiations before filing, and controlling the timetable on which these cases are proceeding, the Debtors' management, the investors in the Pre-Petition Banks' claims and the Pre-Petition Banks are attempting to dictate the outcome of these cases solely for their own benefit. The Court must stay all proceedings related to the Debtors' proposed Plan and Disclosure Statement or, at least, reschedule the hearing on the Disclosure Statement for a date no earlier than December 31, 2003 or the completion of the Pending Litigation. Alternatively, if either such relief is not granted, the

Court must modify the Exclusive Periods to permit the Committee to file and pursue an alternative Plan.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, the Committee respectfully requests that this Court enter an order staying any and all proceedings related to the Debtors' proposed Plan and/or Disclosure Statement or re-schedule any hearing on the Disclosure Statement to a date no sooner than December 31, 2003 or the completion of the Pending Litigation. Alternatively, the Committee respectfully requests that this Court enter an order terminating the Debtors' Exclusive Periods to permit the Committee to file an alternative Plan. In either event, the Committee requests that the Court grant the Committee such other and further relief as this Court deems just and proper.

Dated: August 1, 2003
Wilmington, Delaware

Respectfully submitted,

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