

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re	)	Chapter 11
	)	Case No. 02-11125 (KJC)
EXIDE TECHNOLOGIES., <i>et al.</i> ,	)	
	)	Hearing Date: 8/19/03 @ 4:00 p.m.
Debtors.	)	Objection Deadline: 8/25/03 @ 10:00 a.m.

**TRANSAMERICA EQUIPMENT FINANCIAL  
SERVICES CORPORATION'S OBJECTION TO THE  
DISCLOSURE STATEMENT FOR THE DEBTORS' FIRST  
AMENDED JOINT PLAN OF REORGANIZATION UNDER  
CHAPTER 11 OF THE BANKRUPTCY CODE [DI # 2097]**

Transamerica Equipment Financial Services Corporation ("Transamerica"), by and through its undersigned counsel, hereby objects to the *Disclosure Statement for the Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [DI 2097] ("Disclosure Statement"), filed by the above-captioned debtors ("Debtors"). In support of this Objection, Transamerica respectfully states as follows:

1. On April 15, 2002, each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code ("Bankruptcy Code").
2. Transamerica, as lessor, and the Debtors, as lessees, are parties to a Master Equipment Lease Agreement No. 31768 ("Lease"), pursuant to which Transamerica leased certain equipment to the Debtors as set forth on Lease schedule nos. 07, 08 and 09 ("Equipment").
3. The Lease is a "true lease" and Transamerica is the title owner of the Equipment.
4. The Debtors have not assumed or rejected the Lease, nor have they applied to the Court for authority to assume or reject the Lease.
5. On June 23, the Debtors filed the *Debtors' First Amended Joint Plan of*

*Reorganization Under Chapter 11 of the Bankruptcy Code* [DI 2096] (“Plan”) and the Disclosure Statement. A hearing to approve the Disclosure Statement is set for August 22, 2003.

6. Transamerica objects to the Disclosure Statement on the basis that it fails to satisfy the requirements of section 1125 of the Bankruptcy Code. *See Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 362 (3d Cir. 1996) (“Because creditors and the bankruptcy court rely heavily on the debtor's disclosure statement in determining whether to approve a proposed reorganization plan, the importance of *full* and honest disclosure cannot be overstated.”) (emphasis added); *see also In re Phoenix Petroleum Co.*, 278 B.R. 385, 393 (E.D. Pa. 2001) (“[t]he general purpose of the disclosure statement is to provide ‘adequate information’ to enable ‘impaired’ classes of creditors and interest holders to make an informed judgment about the proposed plan and determine whether to vote in favor of or against that plan.”). Specifically, the Disclosure Statement fails to disclose the Debtors' intentions with regard to the Lease under the Plan, and fails to meet the requirements of section 365(b) of the Bankruptcy Code to the extent that Debtors propose to assume the Lease through the Plan.

7. The Disclosure Statement does not adequately address the Debtors’ intentions with regard to the Lease. Section I.1 of the Disclosure Statement states that leases will be assumed unless one of five listed contingencies applies, including if such lease is listed on a Plan Supplement, which will be filed 10 days prior to the hearing on the Disclosure Statement. As written, the Disclosure Statement does not provide Transamerica with any certainty as to the proposed treatment of its Lease under the Plan.

8. To the extent that the Debtors intend to reject the Lease under the Plan, the Disclosure Statement does not state the proposed effective date of such rejection and does not

provide for the return/retrieval of the Equipment. Rejection of the Lease should not be effective until the date the Debtors return the Equipment to Transamerica upon the terms and conditions set forth in the Lease.

9. To the extent that the Debtors intend to assume the Lease under the Plan, the Disclosure Statement does not adequately address the Debtors' obligation to cure defaults under the Lease, pursuant to section 365(b)(1) of the Bankruptcy Code. Section I.1 of the Disclosure Statement provides that the Debtors may assume the Lease through the Plan. However, the Disclosure Statement does not provide the information required by section 365(b)(1) of the Bankruptcy Code relating to amounts necessary to cure defaults under Lease if assumed. The Disclosure Statement merely states that defaults shall be satisfied. The Disclosure Statement does not indicate what amount, if any, the Debtors propose to pay to cure defaults under the Lease, nor does it provide a mechanism for Transamerica to object to any cure amount the Debtors may propose, or a timetable for court determination of the appropriate cure amount. Based on the Debtors' obligation imposed by section 365(b)(1)(A) of the Bankruptcy Code to promptly cure any existing defaults, Transamerica asserts that the Disclosure Statement must provide (i) the amount the Debtors propose to pay to cure defaults under the Lease, and (ii) a procedure and timetable for filing objections to such proposed cure amount and scheduling a hearing on the matter, if necessary.

10. Transamerica will not know the proposed treatment of its interests or whether (a) it can or should vote to accept the Plan and/or (b) it should object to the Plan, until it receives the following information: (i) confirmation as to the proposed treatment, without equivocation or contingency, of the Lease under the Plan; (ii) if the Debtors intend to assume the Lease,

information concerning any proposed cure due under the Lease and a proposed procedure and timetable for objection to the proposed cure amount and adjudication of the cure amount, if necessary; and (iii) if the Debtors intend to reject the Lease, the proposed effective date of rejection and information regarding return/ retrieval of the Equipment. Accordingly, Transamerica cannot evaluate or make an informed judgment about the Plan based on the information contained in the Disclosure Statement. Transamerica submits that the Debtors must unequivocally declare their intentions, as set forth above, to Transamerica and its counsel no later than 10 days prior to the earlier of the deadlines to object to confirmation of the Plan or to vote on the Plan.

11. Transamerica expressly reserves: (i) its right to object to any proposed plan of reorganization on any grounds, including any proposed assumption and assignment therein; and (ii) all of its rights and claims under the Lease and under section 365 of the Bankruptcy Code.

WHEREFORE, for all of the foregoing reasons, Transamerica respectfully requests that this Court deny approval of the Debtors' Disclosure Statement.

Dated: August 19, 2003  
Wilmington, Delaware

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