UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	:	CHAPTER 11
EXIDE TECHNOLOGIES, Inc.,	:	BANKRUPTCY NO. 02-11125 (KJC)
Debtor.	:	

EMERGENCY MOTION OF ENERSYS, INC.
FOR THE ENTRY OF AN ORDER AUTHORIZING AN EXAMINATION
OF EXIDE TECHNOLOGIES, INC. PURSUANT TO BANKRUPTCY RULE 2004

EnerSys, Inc. ("**EnerSys**"), by its undersigned counsel, hereby requests the entry of an order authorizing EnerSys to conduct an examination of Exide Technologies, Inc. ("**Exide**") and compelling Exide to submit to such examination by producing certain documents pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, and in support thereof states as follows:

1. On April 15, 2002 (the "**Petition Date**"), Exide and certain of its subsidiaries (collectively the "**Debtors**") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

2. Since the Chapter 11 filing, the Debtors have remained in possession of their properties and assets as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. EnerSys and Exide are parties to various agreements (the "**Agreements**") entered into in connection with the acquisition in 1991 of Exide's industrial battery business by a predecessor in interest to EnerSys. Exide has filed notices (the "**Rejection Notices**") seeking rejection of the Agreements. EnerSys has filed an objection to the Rejection Notices asserting, among other things, that the Agreements are not executory contracts. Trial on the Rejection

Notices is scheduled for October 9 and October 10, 2003. While EnerSys believes that it will prevail at trial, if it does not, EnerSys will have a substantial rejection damage claim which will exceed $50.0 million.

4. The Debtors have filed their Second Amended Joint Plan of Reorganization (the "**Debtors' Plan**") which, among other things, would discharge all general unsecured claims against Exide in return for a distribution of about one percent (1%). The Debtors have filed a disclosure statement in support of the Debtors' Plan (the "**Disclosure Statement**") which states that the value of the Debtors' entire business is $950.0 million (the "**Enterprise Value**").

5. EnerSys believes that the process by which the Debtors arrived at the Enterprise Value was fundamentally flawed. Neither the Debtors nor Blackstone, the Debtors' financial advisor, ever contacted EnerSys about its interest in the Debtors' assets. Such lack of contact is surprising given that (a) EnerSys has, on numerous occasions since the Petition Date, expressed its interest in purchasing assets from the Debtors, (b) EnerSys is a well financed industrial battery manufacturer with annual sales of about $1.0 billion, and (c) EnerSys is a logical strategic buyer for substantial portions of the Debtors' business. Further, while the Disclosure Statement indicates that the $950.0 million Enterprise Value was confirmed by inquiries in the private equity markets, neither the Debtors nor Blackstone ever contacted Morgan Stanley Capital Partners, the majority owner of EnerSys and a prominent private equity fund with substantial strategic holdings in the lead acid battery business.

6. The fundamentally flawed valuation process pursued by the Debtors and Blackstone has, not surprisingly, yielded a fundamentally flawed result. The $950.0 million Enterprise Value is simply unsupportable. The mid-point of the EBITDA multiple utilized by Blackstone to determine the Enterprise Value, something under five times, is substantially below the multiples utilized by buyers in the Debtors' industry.

7. EnerSys believes that an appropriate multiple for the Debtors' businesses is seven times EBITDA. By letter dated August 28, 2003 (the "**EnerSys Letter**"), EnerSys expressed its strong interest in acquiring the Debtors' transportation business and, possibly, portions of their industrial business, at seven times the last twelve months EBITDA generated by those segments and requested cooperation in providing for review of non-public information. A copy of the EnerSys Letter is attached hereto, marked Exhibit "A" and made a part hereof. While the publicly available information which EnerSys has reviewed does not permit EnerSys to determine, with certainty, the EBITDA attributable to the transportation business, EnerSys believes that the EBITDA of the Debtors' transportation segment for the twelve months ending March 31, 2003, approached $150.0 million and that a sale of the transportation business alone to EnerSys would yield more than the $950.0 million Enterprise Value assigned by the Debtors to their entire business. Further, if the transportation business were sold to EnerSys, the Debtors would still have substantial network power and industrial battery businesses which, it appears, would yield EBITDA of approximately $50.0 million per year. As a result, it is possible that a plan of reorganization could be developed around a sale of the transportation business to EnerSys which would yield a significant distribution to unsecured creditors.

8. As noted above, EnerSys currently has access only to publicly available information. In order for EnerSys to confirm its interest in the Debtors' transportation business, and possibly segments of the industrial business, EnerSys needs access to non-public information including the information listed on Exhibit "B", attached hereto and made part hereof, and information in any data room (including electronic data rooms) assembled for other potential buyers or investors. Absent such access, to the extent EnerSys, or any other party which may elect to object to confirmation of the Debtors' Plan, wishes to point to the interest EnerSys has expressed as evidence that the $950.0 million Enterprise Value upon which the Debtors' Plan is

based is too low, the Debtors would likely seek to undermine the credibility of the EnerSys expression of interest based upon the failure of EnerSys to even begin to review non-public information. The Debtors should not be permitted to shield their 1% plan from real scrutiny by obstructing access by EnerSys to information.

9. On September 2, 3003, Robert Lapowsky, counsel to EnerSys, spoke to Matthew Kleinman, counsel to the Debtors, about the EnerSys request for relevant non-public information. Mr. Kleinman indicated his belief that EnerSys was required to proceed by formal discovery pursuant to Federal Rule of Bankruptcy Procedure 7026 and advised that, to the extent EnerSys had a proposal, Mr. Lapowsky should provide it in writing. In response, Mr. Lapowsky expressed his view that, absent an agreement, EnerSys was entitled to seek an examination pursuant to Federal Rule of Bankruptcy Procedure 2004. Further, in order to facilitate a possible resolution, Mr. Lapowsky agreed to make a written proposal.

10. On September 4, 2003, Mr. Lapowsky e-mailed a proposal to Mr. Kleiman pursuant to which the parties would execute a mutually acceptable confidentiality agreement and Exide would produce the documents identified on Exhibit "B" attached hereto and provide access to any existing data rooms, in each case by September 10, 2003. In response, Mr Kleiman offered only to treat Exhibit "B" as a document request and to shorten the Debtors' response time to three weeks.

11. Ignoring, for the moment, the appropriate form of an information request by EnerSys (Rule 7026 or Rule 2004) and focusing on the substance of the dispute (the timely production of information) it is critically important to understand that, even if this Court should conclude that production of the requested information in three weeks would be reasonable, which it is not, Mr. Kleiman did not actually propose that Exide would produce anything in three weeks. Rather, Mr. Kleiman just agreed that Exide would respond in three weeks. In other

words, in three weeks EnerSys could be presented with nothing more than an objection and be faced with prosecuting a motion to compel with less than one month remaining until the confirmation hearing. It is equally important to understand that, once an initial production of documents has been received, EnerSys will require some time to review the documents and, possibly, seek additional information in order to refine its expression of interest. Given the time EnerSys will need and the short amount of time remaining until the confirmation hearing, three weeks for initial production is an unreasonably long period of time. Such is particularly true since most, if not all, of the documents requested by EnerSys should be readily available. Further, data rooms either do or do not exist. If they exist, there is no reason EnerSys should be denied access for three weeks.

12. Turning, then, to the legal issue raised by Exide, it is clear that EnerSys is under no obligation to proceed under Rule 7026. Rule 7026 only applies to adversary proceedings and contested matters. Federal Rules of Bankruptcy Procedure 7026, 9014. No adversary proceeding exists which would require resort to Rule 7026 for information. Further, while EnerSys may object to the Debtors' Plan, it has not yet done so and the mere possibility that EnerSys might object does not create a contested matter. *See* 9 *Collier Bankruptcy* ¶2004.02[2] (although some courts limit use of Rule 2004 when an adversary proceeding or contested matter is pending, since Rule 2004 is broader in scope than the ordinary rules of discovery, the use of Rule 2004 to prepare for the initiation of litigation is allowed)

13. Rule 2004 of the Federal Rules of Bankruptcy Procedure, not Rule 7026, controls the EnerSys request for information. Rule 2004 allows parties-in-interest to, among other things, compel the production of documents relating to the estate, its administration and the debtor's assets and liabilities. Neither Bankruptcy Rule 2004 nor Local Rule 2004.1 of Bankruptcy Procedure for the District of Delaware, require formal discovery requests pursuant to

Bankruptcy Rule 7026 prior to the filing of a motion for a Rule 2004 examination. *See* Fed. R. Bankr. P. 2004; Local Rule of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware 2004.1. In fact, Bankruptcy Rule 2004 contains no preconditions and the Local Rule simply requires that the parties attempt to resolve requests for information informally before filing a Rule 2004 Motion. EnerSys has made such an attempt, but to no avail.

14. It is the lack of formal discovery preconditions to seeking court involvement which, for the purposes of this matter, distinguishes Rule 2004 from Rule 7026 and drives the parties positions. If Rule 7026 applies, then under Federal Rule of Bankruptcy Procedure 7037, a motion to compel can only be filed after service of a formal request and the passage of the applicable response period. Exide wants to force everything into Rule 7026 because that delays court involvement and, as a result, keeps control of information flow in its hands as long as possible. For reasons which should be obvious, EnerSys wants and needs to get the Court involved as soon as possible.

15. Given the very limited time remaining before the confirmation hearing, requiring EnerSys to serve formal discovery requests under Rule 7026 (even with expedited response times), waiting for the inevitable objections, requiring EnerSys to then file a motion to compel and waiting for a hearing date will clearly result in significant delay which will prejudice not only EnerSys but, also, any party which may elect to oppose confirmation of the Debtors' Plan.

16. By this Motion, and in accordance with Bankruptcy Rule 2004, EnerSys requests that the Court order Exide to produce the documents identified in Exhibit "B" hereto at the offices of Stevens & Lee, P.C. and permit EnerSys to have access to any existing data room, in each case at the earliest possible time deemed reasonable by the Court.

17. Upon information and belief, the Official Committee of Unsecured Creditors supports the relief requested herein.

WHEREFORE, for reasons set forth above, EnerSys respectfully requests that this Court enter an order granting this Motion and providing such other relief as is just and proper.

Dated: September 5, 2003

STEVENS & LEE, P.C.

/s/ Thomas G. Whalen, Jr.

Thomas G. Whalen, Jr., Esquire
300 Delaware Avenue
Suite 800
Wilmington, DE 19801
Phone: (302) 425-3304
Facsimile: (610) 371-8512
E-mail: tgw@stevenslee.com

-and-

Robert Lapowsky, Esquire
1818 Market St. , 29th Floor
Philadelphia, PA 19103
Phone: (215) 751-2866

Attorneys for EnerSys, Inc.