

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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

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**EMERGENCY MOTION OF ENERSYS, INC. FOR THE  
ENTRY OF AN ORDER EXTENDING THE RESPONSE  
DEADLINE TO THE DEBTORS' MOTION FOR SUMMARY  
JUDGMENT PURSUANT TO LOCAL RULE 9006-2**

EnerSys, Inc. ("**EnerSys**"), by its undersigned counsel, hereby requests the entry of an order extending (the "**Extension Motion** ") the response deadline to the *Debtors' Motion for Summary Judgment that the Trademark License is Executory* (the "**Debtors' Summary Judgment Motion**") pursuant to Local Rule of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware 9006-2(the "**Local Rule[s]**"), and in support thereof states as follows:

1. 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.

2. On May 16, 2003, the Court signed a scheduling order (the "**Scheduling Order**") which detailed the applicable discovery and pre-trial deadlines that would control this contested

matter. On June 25, 2003, the Court entered the amended scheduling order (the "**Amended Scheduling Order**") which extended some of the deadlines based on the new hearing dates which were agreed to by the Court and the parties. A true and correct copy of the Amended Scheduling Order is attached as Exhibit "A."

3. The Amended Scheduling Order does not provide any deadlines for the filing of summary judgment motions or other dispositive motions. The absence of such deadlines is not accidental. At the scheduling conference during which agreement was reached on the dates recited in the Amended Scheduling Order, counsel to EnerSys suggested that deadlines for dispositive motions be established. The Court declined to do so and advised the parties that, while dispositive motions were not precluded, it was unlikely that this matter would be decided on any such motions. As a result, and because, as will be established in the EnerSys objection to the Debtors' Summary Judgment Motion, resolution of the complex issues involved in this case are highly fact driven, EnerSys has not filed, and does not intend to file, its own summary judgment motion. The Debtor, on the other hand, has chosen to ignore the Court's guidance and has moved for summary judgment on one of the many issues in this case.

4. The Debtors' Summary Judgment Motion was filed late on Friday August 29, 2003, the day before the Labor Day weekend. The Debtors did not provide EnerSys' counsel with any advance notice that the Summary Judgment Motion was to be filed. The Summary Judgment Motion was not actually seen by EnerSys' counsel until Tuesday, September 2, 2003. Pursuant to Local Rule of Civil Procedure of the United States District Court for the District of Delaware 7.1.2, any objection by EnerSys to the Debtors' Summary Judgment Motion would be due on September 9, 2003, one week after EnerSys' counsel first became aware it had even been filed.

5. Upon becoming aware of the filing of the Debtors' Summary Judgment Motion, EnerSys' counsel immediately requested an extension to September 22, 2003 to respond. The Debtors agreed to an extension, but only until September 16, 2003.

6. The Debtors' Summary Judgment Motion requests a ruling that the Trademark License Agreement is executory. This issue goes to the heart of the dispute between the parties. As will be more fully discussed in EnerSys' objection to the Debtors' Summary Judgment Motion, the legal and factual issues involved in determining whether an exclusive world-wide, fully prepaid, royalty free, perpetual license granted in connection with a closed sale transaction from 1991 is executory are not simple. For instance, EnerSys has already asserted that the Trademark License Agreement is, in fact, a sale of the Exide and certain other marks for use in the industrial battery business. The sale versus license issues are fact specific and legally complex. In addition, even if the Trademark License Agreement is not construed as a sale of the Exide and related marks, no reported decision appears to ever have found an exclusive, fully prepaid, perpetual trademark license to be executory. Finally, the Debtors Summary Judgment Motion does not even address the fact the Trademark License Agreement was executed as part of a much larger integrated transaction, the sale of the Exide industrial battery business, and that, as a result, executoriness of the Trademark License Agreement can not be addressed except in connection with analyzing the executoriness of all of the related agreements as a whole. In fact, the Debtors have sought to reject all of the other agreements.

7. Given the complexity and importance of the issues raised by the Debtors' Summary Judgment Motion, EnerSys believes the extension granted by the Debtors is insufficient to allow an appropriate amount of time to fully and properly respond.

8. It is also important to note that the parties have not yet even concluded fact discovery. In fact, they are about to take the depositions of each sides Chief Executive Officers. These depositions, which are the last scheduled depositions, will be taken on September 11<sup>th</sup> and 16<sup>th</sup> respectively. Additionally, pursuant to the Amended Scheduling Order, expert reports from each side are due on September 22, 2003. It is patently unfair to force EnerSys to file a response to the Debtors Summary Judgment Motion by September 16 in light of the many other deadlines and pre-trial matters EnerSys must contend with under the Scheduling Orders. This is particularly true in light of the fact that there is absolutely no prejudice to the Debtors in having EnerSys respond on September 22, a mere 6 days after the deadline established by the Debtors. Finally, EnerSys has been advised by counsel to the Debtors that the trial dates of October 9 and 10, 2003 are being reset by the Court and that the likely new dates will not be until sometime in November. If that is the case, it is hard to understand why the Debtors would object to the requested extension.

9. It should be noted that Local Rule 9006-2 automatically grants a party an extension to respond to a motion until disposition of any extension request provided such extension request is filed "before the expiration of the period prescribed by the Code ... these Rules, the District Court Rules..." See Local Rule 9006-2. EnerSys has filed this extension request within the time required by the District Court Rule.

10. EnerSys represents that this Extension Motion was filed only after good faith efforts to seek a consensual resolution failed.

WHEREFORE, EnerSys respectfully requests the Court consider this Extension Motion at the next regularly scheduled omnibus hearing date or at a telephonic hearing at its earliest convenience.

Dated: September 8, 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](mailto:tgw@stevenslee.com)

-and-

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

*Attorneys for EnerSys, Inc.*