

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

In Re:	:	CHAPTER 11
	:	
EXIDE TECHNOLOGIES, et al.,	:	CASE NO. 02-11125 (KJC)
	:	
Debtors.	:	(Jointly Administered)
	:	

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**LIMITED OBJECTION OF CITICORP VENDOR FINANCE, INC. TO DEBTORS'  
NOTICE REJECTING CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED  
LEASES (D.I. NO. 2352)**

Citicorp Vendor Finance, Inc. f/k/a Copelco Capital, Inc. ("Citicorp"), by its attorneys, hereby objects to the Debtors' Notice Rejecting Certain Executory Contracts and Unexpired Leases (D. I. 2352 the "Notice") to the extent below and respectfully represents:

**BACKGROUND**

1. On April 15, 2002, (the "Petition Date"), the Debtors filed their voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the District of Delaware.

*Lease Agreements*

2. In the Notice, Debtors seek to reject two (2) Service Agreements entered into by debtor Exide Technologies with Docuteam, Inc. on July 9, 2001 (Agreement No. 816993 and 833625), and April 12, 2001 (Agreement No. 2585888), for the lease of certain unspecified equipment.
3. In the Notice, the lessor was identified as Docuteam. Docuteam, however, assigned Lease Agreement No. 2585888 to Citicorp.<sup>1</sup>
4. A true copy of Lease Agreement No. 2585888 is attached hereto as Exhibit A.
5. Additionally, Lease Agreement No. 2585888 was the subject of a prior Order of this Court. On August 16, 2002, an Order was entered directing Debtors to resume

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<sup>1</sup> Based upon the information set forth in Debtor's Notice, Citicorp does not believe that it is the assignee of the other Lease Agreement being rejected by Debtor. Citicorp reserves the right to supplement this Objection if further information reveals that the other Lease Agreement is also held by Citicorp.

payments on several Citicorp leases, including Lease Agreement No. 2585889, and ordering that all amounts coming due on the leases were to be paid as and when due (Docket Index 678). A true copy of the Order is attached as Exhibit B.

6. As of this date, a total of \$155.15 through September, 2003 is due and owing in §365(d)(10) payments on Lease Agreement No. 2585888.

### **RELIEF REQUESTED**

7. With respect to equipment subject to a rejected lease, a debtor is required to return to the lessor the equipment thereby enabling the lessor to re-let the equipment to a third party. *See In re Rigg*, 198 B.R. 681 (Bkrtcy. N.D.Tex.1996); *In re Belevings*, 119 B.R. 814, 817 (Bkrtcy.N.D.Okla.1990).
8. Notwithstanding rejection, a debtor-lessee should return the leased equipment in accordance with the return and maintenance provisions contained in the rejected lease. It is well-settled that a rejection of a lease does not rescind the substantive rights and obligations of the parties as set forth in the lease. *See Cinicola v. Scharffenberger*, 248 F.3d 100, 188 at n.8 (3<sup>rd</sup> Cir.2001).
9. A debtor lessee's failure to comply with maintenance and return conditions may give rise to an administrative claim for damages suffered by the lessor as a result of non-compliance. *See United Trucking Serv., Inc.*, 851 F.2d 159, 162 (6<sup>th</sup> Cir.1988).
10. There is also the issue of the effective date of the rejection.
11. Citicorp submits that the effective date should be the latter of the date of the rejection order or the date of the return of the equipment to Citicorp.
12. The majority view is that the rejection is effective when the bankruptcy court enters an order authorizing the rejection. *See, e.g., In re Thinking Machines Corp. v. Mellon Fin. Servs.*, 67 F.3d 1021, 1025-28 (1st Cir.1995).
13. Citicorp acknowledges that there is precedent for setting an earlier effective date. The minority view is that the rejection is effective when the Debtor in Possession or the Trustee communicates its or his decision in an appropriate manner provided that the Court ultimately approves the rejection. *See, e.g., In re By-Rite Distributing, Inc.*, 55 B.R. 740, 742-43 (D.Utah.1985). Citicorp submits that the majority rule is better

reasoned and is generally followed in this circuit. Citicorp also submits that the exception has generally been limited to cases involving real estate where the debtor has notified the landlord of its intention to reject the lease and the premises have been surrendered to the landlord prior to the filing of the motion. Such circumstances are not present here.

14. Finally, there is the issue of the Debtors' failure to comply with their obligations under 11 U.S.C. §365(d)(10). The Debtors should be required to pay all amounts currently due under §365(d)(10).
15. On a related note, the Debtors should also be required to continue their post-petition obligations under the Leases until the equipment is returned to Citicorp. In the alternative, Citicorp should be provided with a reasonable timeframe to pick-up the equipment with the Debtors being liable (as an administrative expense claim) for (a) any additional rent on a per diem basis until each vehicle is made available, as well as (b) all costs associated with such removal.
16. Citicorp also reserves its rights to assert any and all administrative expense claims under Section 503(b)(1)(A) of the Bankruptcy Code to include, but not limited to, missing, stolen, or damaged pieces of its equipment.
17. Citicorp reserves the right to amend, supplement and/or withdraw this Objection at or prior to the hearing on the Notice.

WHEREFORE, Citicorp Vendor Finance, Inc. requests that the Court enter an Order:

- A. Conditioning the rejection of the Lease Agreement on the following:
  - 1) making the rejection effective as of the latter of the date of the rejection order or the date of the return of the equipment to Citicorp;
  - 2) requiring the Debtors to make immediate payment of any rents that were incurred during the Section 365(d)(10) period prior to the entry of the rejection order and to continue those payments until the equipment is returned;
  - 3) requiring the Debtors to comply with the return provisions of the Lease Agreement as to the return of the vehicles or, failing such cooperation, allowing Citicorp an administrative expense claim for costs and damages incurred by it as a result of non-compliance; and,
- B. Granting Citicorp relief from the automatic stay; and,

C. Granting such further relief as is necessary and appropriate.

Dated: October 3, 2003  
Wilmington, Delaware

Respectfully submitted,

*/s/ John R. Weaver, Jr.*

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