

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	:	
	:	Chapter 11
Exide Technologies, et al.	:	
	:	Bankruptcy Case No. 02-11125(KJC)
Debtors.	:	(Jointly Administered)
	:	Objection Deadline: Oct. 7, 2003
	:	Hearing Date: Oct. 21, 2003, 10:00 a.m.
	:	

**OBJECTION OF NATIONAL CITY LEASING CORPORATION  
TO CONFIRMATION OF DEBTORS' THIRD AMENDED JOINT  
PLAN OF REORGANIZATION**

National City Leasing Corporation, by its attorneys, Weir & Partners LLP, hereby files this objection to the confirmation of the Debtors' Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code, and in support thereof, avers the following:

Procedural History

1. On April 15, 2002, Exide Technologies and certain of its domestic subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). This Court subsequently entered an Order for joint administration consolidating the Debtors' estates for procedural purposes.

2. The Debtors remain in possession of their businesses and continue to manage same as debtors-in-possession pursuant to §§1107 and 1108 of the Bankruptcy Code.

3. The Debtors and their non-debtor affiliates are manufacturers and distributors of lead acid batteries and other related electrical energy storage products and collectively are, upon information and belief, the largest international lead battery manufacturer.

4. On July 10, 2003, the Debtors proposed their first Plan of Reorganization followed by the filing of their First Amended Plan Joint Plan and Disclosure Statement on July 24, 2003.

5. On August 25, 2003, the Debtors filed the Debtors' Second Amended Joint Plan of Reorganization. The Debtors' Third Amended Joint Plan of Reorganization (the "Plan") was filed on September 8, 2003 accompanied by the Debtors' Second Amended Disclosure Statement (the "Disclosure Statement"). By Order dated September 10, 2003, the Disclosure Statement was approved and the Confirmation Hearing on the Plan was scheduled for October 21, 2003.

6. National City Leasing Corporation ("National City") is a creditor of the debtor, Exide Technologies ("Exide" or the "Debtor") by virtue of the assignment of that certain Equipment Schedule N-1 of the Master Lease Agreement dated December 23, 1997, by and between General Electric Corporation and Exide Corporation (predecessor to Exide Technologies) (the "Equipment Lease").

7. On July 30, 2002, National City filed its motion for an order to compel Exide to, among other things, assume or reject the Equipment Lease. The parties, by Stipulation and Agreed Order dated August 23, 2002 (the "Stipulation"), agreed that the Debtor would continue timely to meet its obligations under the Equipment Lease "...until the [Equipment Lease] is assumed or rejected...."<sup>1</sup> The Stipulation further provided that the Debtor was without prejudice to seek a disallowance of National City's claim.

8. On March 24, 2003, the Debtor initiated adversary proceeding number 03-51952 against National City, among others, seeking a declaration that the Equipment Lease is a disguised financing agreement and not a "true lease" (the "Litigation"). National City answered

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<sup>1</sup> Upon information and belief, the deadline for assumption and rejection of leases and/or executory contracts is December 8, 2003.

the Complaint and the Litigation remains pending. It is believed, and therefore averred, that the Litigation will not be completed until well after the now scheduled Confirmation Hearing.

### The Plan

9. Article VI of the Plan provides for the treatment of leases and executory contracts, in part, as follows:

A. *Assumption of Executory Contracts and Unexpired Leases.*

...

*Immediately prior to the Effective Date, except as otherwise provided in this section, all Purported Leases shall be deemed assumed on a conditional basis pending the entry of a final, non-appealable order resolving the Recharacterization Adversary Proceeding in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code except those Purported Leases that (1) have been rejected on a conditional basis pending the entry of a final, non-appealable order resolving the Recharacterization Adversary Proceeding by order of the Bankruptcy Court, (2) are the subject of a motion to reject on a conditional basis pending the entry of a final, non-appealable order resolving the Recharacterization Adversary Proceeding pending on the Effective Date, or (3) are identified on a list to be included in the Plan Supplement. To the extent that a final, non-appealable order is entered in the Recharacterization Adversary Proceeding providing that a Purported Lease is a true lease, the conditional assumption or rejection of such Purported Lease, whichever is applicable, shall become final and such Purported Lessor shall be entitled to the treatment provided for other lessors and non-debtor parties to executory contracts To the extent that a final, non-appealable order is entered in the Recharacterization Adversary Proceeding providing that a Purported Lease is a financing transaction, such Purported Lessor shall be entitled to a Class P2-Other Secured Claim to the extent of the value of the equipment subject to the Purported Lease under section 506 of the Bankruptcy Code if such Purported Lessor qualifies as a secured creditor under applicable non- bankruptcy law and a P4-General Unsecured Claim for any amounts owed by the Debtors greater than the value of the equipment or for the entire amount of such allowed claim if the Purported Lessor does not qualify as a secured creditor under applicable non-bankruptcy law. With respect to any Purported Lease as to which the Debtors retain possession of the underlying equipment or to which the Debtors have not returned the underlying equipment, from the Confirmation Date through the date of entry of a dispositive final, non-appealable order in the Recharacterization Adversary Proceeding with respect to such Purported Lease or by other agreement between the parties, the Debtors and the Purported Lessors shall continue to perform their obligations under the Purported Leases in accordance with each such Purported Lease's terms; provided however that with respect to any Purported Lease that is conditionally assumed as of the Confirmation Date,*

*the Debtors shall not be required to make any cure payment within the meaning of section 365 of the Bankruptcy Code until the entry of a final, non-appealable order in the Recharacterization Adversary Proceeding determining that such Purported Lease is a “true lease.”*

10. This provision presumes the conditional assumption or rejection of certain leases (both real property and personalty) contingent on either the pendency of a motion to assume or reject, the final effect of an order of the Court to assume or reject, or the inclusion on a “list to be included in the Plan Supplement.” To the extent that no motion has been filed and no order entered, a creditor cannot fathom its potential treatment under the Plan without the benefit of the filing of the proposed Plan Supplement.

11. As noted in the 10-K (for fiscal year ended March 31, 2003), as appended to the Plan, certain battery manufacturing facilities are leased by the Debtors. It is unknown, at this juncture, whether the Debtors will opt to proceed with these real property leases -- the rejection of such leases which will undoubtedly result in the further rejection of equipment leases relating specifically to these facilities.

12. Such rejections will, in turn, provide the basis for rejection claims under §§365(g) and 502(g) as noted in the Plan in Article VI as follows:

**B. *Claims Based on Rejection-of Executory Contracts or Unexpired Leases***

*All proofs of Claims with respect to Claims arising from the rejection of executory contracts or unexpired leases, if any, must be Filed with the Bankruptcy Court **according to the deadlines established by the Bankruptcy Court in the Chapter 11 Cases.** Any Claims arising from the rejection of an executory contract or unexpired lease not Filed within such time will be forever barred from assertion against the Debtors or Reorganized Debtors, their Estates and property unless otherwise ordered by the Bankruptcy Court or provided herein. (emphasis added)*

Upon information and belief, no “deadline” for filing such claims has been published.

13. Given the intentional vagueness with respect to executory contracts (including the lack of adequate information regarding the assumption or rejection of certain essential lease agreements with the Debtors), National City cannot make a determination as to its potential treatment under the Plan, the direct result of which National City remains hampered in its ability to make strategic decisions with respect to its equipment and to even ballot in favor or against the Plan.

14. To add to the uncertainty and confusion, “Effective Date”<sup>2</sup> is defined in the Plan (Article I, B. 59) as the “...date selected by the Debtors, which is a Business Day after the Confirmation Date on which: (a) no stay of the Confirmation Order is in effect, and (b) all conditions specified in Article IV have been (i) satisfied or (ii) waived...”.

15. Pursuant to Article X, paragraph C, “[o]n or after the Effective Date, each Holder of a claim who has accepted the Plan shall be deemed to have unconditionally released each Releasee<sup>3</sup> from any and all Claims....” There is no language in this provision which protects creditors such as National City from the release of its claim against the Debtors prior to its claim being cast as secured, unsecured, allowed, disallowed, and/or lease or financing agreement. Moreover, given that National City, under the terms of the Plan, may fall within the purview of a

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<sup>2</sup> Generally, the “effective date” is that date upon which a confirmed plan becomes operative and distribution of cash or property is commenced. In essence, it is the point in time when the plan can and should be susceptible of implementation and commencement of the operation of its provisions. The date is important to claimants and interest holders because of the distribution to them of value, whether it be money or other property. Weintraub & Crampton, *Defining Consummation, Effective Date Of Plan Of Reorganization And Retention Of Postconfirmation Jurisdiction: Suggested Amendments To Bankruptcy Code And Bankruptcy Rules*, 64 Am. Bankr.L.J. 245, 276 (1990).

<sup>3</sup> “Releasee” means the Debtors and their Affiliates, [and] the Reorganized Debtors....” See Plan, Article I, B., 129.

Class P2 claim<sup>4</sup>, the release of the Debtor prematurely without a final adjudication of National City's claim, is patently unfair and certainly outside the ambit of §1129 of the Bankruptcy Code.

16. Contrast paragraph C of Article X to paragraph H, which provides in part that: “[e]xcept as otherwise provided herein, from and after the Effective Date, all Holders of Claims....shall be permanently enjoined from commencing or continuing in any manner, any suit or action...on account of or respecting any Claim....”

17. Given the ambiguity in these two latter provisions, it is unclear as to the intended treatment of creditors (inclusive of National City) whose claims remain unresolved at the time of Plan Confirmation and the subsequent proposed “Effective Date”.

18. To the extent that National City's claim remains in question, post-confirmation, and post “Effective Date”, it is imperative that the Debtors provide certain protections to National City such that its claim against Exide is not extinguished prematurely, and such that National City is properly afforded the treatment proposed for it under the Plan.

WHEREFORE, for all of the foregoing reasons, National City Leasing Corporation requests that this Court deny Confirmation of the Debtors' Third Amended Joint Plan of Reorganization, and for such other and further relief as is equitable and just.

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<sup>4</sup> Under the Plan, Class P2 is unimpaired and “conclusively deemed to have accepted the Plan pursuant to §1126(f) of the Bankruptcy Code.” See Plan, Article III, B. 2.

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Dated: October 7, 2003