UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	CHAPTER 11
EXIDE TECHNOLOGIES, ET AL Debtors.	Case No. 02-11125(KJC) Jointly Administered Cases

ENERSYS INC.'S OBJECTION TO DEBTORS' MOTION *IN LIMINE* TO PRECLUDE EVIDENCE OR ARGUMENT REGARDING THE ALLEGED HARM TO ENERSYS THAT MAY RESULT FROM REJECTION

The Debtors' Motion *in Limine* to Preclude Evidence or Argument Regarding the Alleged Harm to EnerSys That May Result From Rejection (the "**Motion in Limine**") is fatally misfocused. Motions *in limine* are properly employed to rule upon the admissibility of evidence. See Bradley v. Pittsburgh Bd. of Educ., 913 F.2d 1064, 1069 (3d Cir. 1990) (motion *in limine* is designed to narrow the evidentiary issues for trial); Caparro v. Woods Servs., 1997 U.S. Dist. LEXIS 17051 , *2-3 (E.D. Pa. 1997) (same).

Evidence that is relevant is admissible. Fed. R. Evid. 402. A trial court has broad discretion in determining the relevance of evidence. See Gilardi v. Flint, 564 F.2d 112, 116 (3d Cir. 1977) (determining the relevancy of evidence is a matter within the discretion of the trial court). Under the Federal Rules of Evidence, the threshold for determining whether material should be admitted as relevant is very low. See 22 Wright & Miller, Fed. Prac. & Proc. § 5165 (2003); Gibson v. Mayor & Council of Wilmington, 2004 U.S. App. LEXIS 189 *40 (3d Cir. 2004) ("the definition of relevant evidence is very broad."). Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the

determination of the action more or less probable than it would be without the evidence. Fed. R. Evid. 401.

If a trial court determines that evidence is relevant, it can exclude such evidence under Federal Rule of Evidence 403 only if the evidence's probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Fed. R. Evid. 403. Rule 403 places in the sound discretion of the trial court the decision to exclude relevant evidence. See Bhaya v. Westinghouse Elec. Corp., 922 F.2d 184, 187 (3d Cir. 1990). The Third Circuit has warned, however, that evidence should be excluded under Rule 403 only sparingly because the evidence excluded is concededly probative. See Spain v. Gallegos, 26 F.3d 439, 453 (3d Cir. 1994). Therefore, the balance under Rule 403 should be struck in favor of admissibility. Id. Debtors have failed to offer any legitimate argument that any of the Rule 403 factors, such as unfair prejudice, exist permitting the exclusion of the evidence under Rule 403.

The Debtors do argue that evidence of harm to EnerSys, which would be caused by rejection of the Agreements[1] (assuming rejection is treated as terminating EnerSys' rights under the Agreements), is irrelevant and should be precluded.[2] In support of their argument, the Debtors cite to a number of cases standing for the proposition that the business judgment test focuses on benefit to the estate. EnerSys does not dispute such proposition. In fact, benefit to the estate is a central issue in deciding whether the business judgment test has been satisfied. See Sharon Steel Corp. v Nat'l Fuel Gas Distrib. Corp. 872 F.2d 36 (3d Cir 1989). However,

[1] Capitalized terms used but not defined herein shall have the meaning stated in EnerSys Inc.'s Trial Brief in Support of Denial of Rejection of Agreements (the "**EnerSys Brief**").
[2] For the reasons stated in the EnerSys Trial Brief, rejection should not be treated as terminating EnerSys' rights.

any analysis of the potential benefit of an act, whether in the context of a bankruptcy proceeding or not, must consider not only the positive impact of the action on the actor but, also, any negative impact on the actor. If, after reducing any positive impact by any negative impact, the result remains positive, the action has a benefit.

One obvious negative impact on a debtor of rejection of a contract is the rejection damage claim, which will result. It is impossible to determine whether an estate will, in fact, be benefited by rejection of a contract without knowing the amount of any resulting rejection damage claim. For example, if rejection of a contract would increase a debtor's enterprise value by $5 million but the non-debtor counterparty to the contract would have a $50 million rejection damage claim which would receive a distribution of 50% (or $25 million) under the debtor's plan of reorganization, rejection would actually cost the debtor $20 million. Under such circumstances, rejection would not result in a benefit to the estate and, presumably, would be denied. See In re Sun City Investment, Inc., 89 B.R. 245 (Bankr. M.D. Fla. 1988) (denying debtor's motion to reject and finding that if debtor was permitted to reject the contract it would result in a large damage claim that would harm unsecured creditors.). See also In re Chestnut Ridge Plaza Associates, L.P., 156 B.R. 477, 480 (Bankr. W.D. Pa. 1993) (Fitzgerald, J.) (holding rejection inappropriate because debtor did not demonstrate how rejection will benefit the estate); In re Bullet Jet Charter, Inc., 177 B.R. 593, 601-602 (Bankr. N.D. Ill. 1995) (holding contract for sale of aircraft was not executory, and even if contract were executory, debtor's decision to reject "grossly abused" its business judgment; rejection would not benefit the estate because contract was for fair market value of the aircraft; rejection was nothing more than an attempt to extract more money from contracting party); Collier's on Bankruptcy, ¶ 365.03. Further, because the benefit to the estate is a concept which focuses on the impact on unsecured creditors, see In re

Lan Associates, 192 F.3d 109 (3d Cir. 1999); In re Chi-Feng Huang , 23 B.R. 798 (Bankr. 9th Cir 1982); In re G. Survivor Corp., 171 B.R. 755 (Bankr. S.D.N.Y. 1995), even if a debtor were able to prove that rejection of a contract would yield a $20 million increase in enterprise value and result in a rejection damage claim of only $10 million, the business judgment test might, nevertheless, not be satisfied. Such could occur if, for example, the debtor's plan of reorganization provided a fixed distribution to unsecured creditors which distribution would be diluted by the rejection damage claim and such dilution was not more than offset by the positive impact on unsecureds of the increase in enterprise value.

The evidence which the Debtors seek to preclude, the harm EnerSys will suffer if the Agreements are rejected and rejection is treated as terminating EnerSys' rights under the Agreements, goes directly to the amount of the damage claim which would be triggered under such circumstance by rejection. For some reason the Debtors, in their Motion, completely ignore the fact that, if they are correct and rejection would terminate EnerSys' rights under the Agreements, the size of the EnerSys' rejection damage claim must be known in order to calculate whether rejection will, or will not, benefit the Debtors' estate. Further, the Debtors do not cite any cases which say that the impact of a rejection damage claim on the estate is irrelevant to the business judgment analysis. In fact, no such cases exist. On the other hand, substantial authority exists for the proposition that size of the rejection damage claim is relevant to the business judgment test. See, e.g., In re Vencor, 2003 Bankr. LEXIS 659, * 8-9 (Bankr. D. Del. 2003) (Walrath, J.) (approving debtor's motion to assume an executory contract and stating that despite the fact that there was no economic benefit to the estate from the assumption, the avoidance of a large claim for rejection damages was a factor which would cause a reasonable business person to assume the contract); In re Sun City Invest., Inc., 89 B.R. at 245. See also Collier's, at

¶ 365.03. Clearly, if rejection would terminate EnerSys' rights under the Agreements, the damage to EnerSys resulting from rejection is highly relevant to the business judgment test and evidence establishing the amount of such claim cannot be precluded.

The Debtors do cite a number of cases, none of which are binding on this Court, [3] to the effect that, once a net benefit to the estate is found to exist, the fairness of rejection to the non-debtor counter party is irrelevant. In fact, there is a split of authority as to whether the equities play a role in determining whether rejection should be granted once a net benefit to the estate is found to exist. See In re G Survivor Corp., 171 B.R. at 755; In re Chi-Feng Huang, 23 B.R. at 798; In re Petur U.S.A. Instrument Co., Inc., 35 B.R. 561 (Bankr. W.D. Wash. 1983); but see Borman's Inc. v. Allied Supermarkets, Inc., 706 S.2d 187 (6th Cir. 1983). Given the absence of any controlling authority, and the split of non-controlling authority, disposition of this purely legal issue in the context of a motion in limine would be inappropriate. However, to the extent the Court is inclined to rule on the relevance of the equities issue, EnerSys refers the Court to its argument on the subject found at pages 48 and 49 of the EnerSys Brief. Further, even if the Court were to rule that the equities are irrelevant to the rejection analysis, which it should not, it is important to understand that the Motion in Limine, to the extent it seeks to preclude evidence of harm to EnerSys, must still fail. Such is true because evidence of harm to EnerSys is needed to establish the amount of the EnerSys rejection damage claim which, for reasons noted above, is clearly relevant.

[3] Cases decided by other lower courts, even if located in the Third Circuit, do not bind this Court. Threadgill v. Armstrong World Industries, Inc., 928 F.2d 1366, 1371 (3d Cir. 1991) ("there is no such thing as 'the law of the district.' Even where the facts of a prior district court case are, for all practical purposes, the same as those presented to a different district court in the same district, the prior 'resolution of those claims does not bar reconsideration by this Court of similar contentions. The doctrine of stare decisis does not compel one district court judge to follow the decision of another.")

The Debtors also raise an argument in their Motion in Limine relating to burden on the estate. Specifically, the Debtors state: "But factors such as the burden imposed on the estate imposed by rejection … are not relevant . . ." [Debtor's Motion in Limine, p. 2]. This argument is confusing since it appears to assume that EnerSys has raised a separate argument that the Court should consider the burden on the estate, which would be caused by rejection. In fact, any consideration of a burden on the estate created by rejection would be subsumed in the benefit to the estate analysis, and EnerSys did not raise any such separate argument. What EnerSys believes the Debtors are actually referring to is an argument, which EnerSys did raise that the business judgment test requires consideration of whether, absent rejection of the Agreements (not as a result of rejection), continued performance would impose a burden on the Debtor. [See EnerSys Brief p.47, 48]. Because this argument focuses on what would happen if the Agreements are not rejected, it has nothing to do with the evidence the Debtors seek to preclude relating to damages EnerSys would suffer if the Agreements are rejected.

WHEREFORE, EnerSys respectfully requests for the reasons stated above, that the Court deny the Debtors' Motion in Limine.

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