

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

	)	Chapter 11
In re:	)	
	)	Case No. 13-11482 (KJC)
EXIDE TECHNOLOGIES,	)	
	)	
Debtor.	)	
	)	<b>Related Docket No. 965</b>

**OBJECTION OF PACIFIC CHLORIDE INCORPORATED TO  
DEBTOR’S MOTION FOR AN ORDER TO IMPLEMENT CLAIMS RESOLUTION  
PROCEDURES FOR CERTAIN CONTINGENT, UNLIQUIDATED,  
AND/OR LITIGATION CLAIMS**

COMES NOW, Pacific Chloride Incorporated (“PCI”), by and through its attorneys, in opposition to the Debtor’s Motion for an Order to Implement Claims Resolution Procedures for Certain Contingent, Unliquidated, and/or Litigation Claims (the “Procedures Motion”) as follows:

1. On December 18, 2000, Exide Corporation (“Exide”) and PCI entered into a contractual agreement (the “Lease”) by which PCI agreed to lease to Exide certain real property located in Shreveport, Louisiana (the “Property”). PCI is the owner of the Property and served as the landlord under the Lease.

2. The Lease required Exide to, among other things, (a) remit timely lease payments; (b) obtain insurance on the Property to protect against damage to the Property during the term of the Lease, as well as permit PCI to recover proceeds under the relevant insurance policy; and (c) bear responsibility for damage sustained by the Property under certain circumstances, including fire and/or environmental damage.

3. In January of 2011, a fire caused significant damage to the Property (the “Fire”).

4. Following the Fire, Exide was instructed to take certain actions to protect the Property against further damage, but Exide failed to honor and/or abide by said instructions, thereby causing the Property to fall into a more expansive state of disrepair.

5. Overall, Exide has failed to take any action to repair the Property.

6. At the time of the Fire, Exide had one or more insurance policies relating to the Property. A copy of the Certificate of Liability Insurance (the “Insurance”) for the Property is attached hereto as **Exhibit A**. Upon information and belief, Exide received proceeds from the applicable insurance policies for damage to its personal property as a result of the Fire. PCI, however, has not received the proceeds from the applicable insurance policies due and owing it.

7. Exide committed a material breach of the Lease by, among other things, (a) failing to repair the Property following the Fire; (b) failing to adequately protect PCI’s interests and/or assure PCI’s recovery in connection with the Insurance covering the lease of the Property;<sup>1</sup> and (c) causing environmental damage to the Property.

8. On June 10, 2013 (the “Petition Date”), Exide Technologies (the “Debtor”) commenced this bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.

9. On or about June 20, 2013, the Debtor moved this Court for the entry of an order authorizing Exide to reject the Lease (the “Rejection Motion”). The Court granted the Rejection Motion on or about July 16, 2013, which allowed for the rejection of the Lease, effective June 26, 2013. As a result thereof, PCI suffered rejection damages in an amount no less than \$700,000.00. Further, pursuant to the Lease, the Property was to be returned in suitable condition to allow PCI to re-let the Property to a new tenant. The Property has suffered

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<sup>1</sup> PCI reserves all rights relating to said insurance policies.

significant damage and Exide is liable to PCI for any and all fees, costs and expenses necessary to put the Property in an adequate condition to be re-let.<sup>2</sup>

10. On October 24, 2013, the Debtor filed the Motion. The Motion seeks to implement a claims resolution procedure for certain contingent, unliquidated and/or litigation claims against the bankruptcy estate [D.I.# 965 at ¶¶ 1-3]. The proposed order to the Motion further explains that such procedures apply to “any individual or entity ... who has filed a proof of claim in the bankruptcy case ...” [D.I.# 965-2 at ¶ II.]. The Debtor seek to expand the scope of the proposed order in reserving the right to subject those claims outside of the bankruptcy estate involving third parties to the claims procedures. *See* D.I.# 965 at fn. 7.

11. The Motion states that the Debtor would possess exclusive authority for determining which claims will be subject to the claims procedures. *See id.* at fn 6. In addition to seeking the implementation of claims procedures, the Debtor requests that the Court refuse to hear any motions seeking relief from the automatic stay until the filing party has completed such procedures. *See id.* at ¶¶ 14-15. The Debtor attempts to rationalize their request through the guise that such procedures, along with the holding of abeyance of any motions for relief from the automatic stay, “will facilitate the Debtor’s efforts to formulate a plan of reorganization.” *Id.* at ¶ 13; *see also id.* at ¶ 16.

12. PCI objects to the Motion on the basis that is subverts the recognized principle that a proof of claim is *prima facie* valid if it ‘alleges facts sufficient to support a legal liability to the claimant.’ *In re Tribune Co., et al.*, 2013 Bankr. LEXIS 1798, at \*8 (Bankr. D. Del. May 2, 2013). By entry of the proposed order, any and all proofs of claim included in the claim resolution procedures are stigmatized, or perhaps, deemed invalid until otherwise proven. Thus,

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<sup>2</sup> PCI has submitted a proof of claim for rejection damages, property damage and unliquidated environmental claims.

the procedures impermissibly place the burden of proof for a properly-filed claim upon the creditor.

13. PCI objects to the Motion to the extent that the Debtor seeks to disrupt claims which may be pursued against those entities related to the Debtor which have not filed for protection under the Bankruptcy Code.<sup>3</sup> An expansion of the claims procedures to such claims would not only run afoul of the express purpose for which the Motion was filed, but also impact claims or property outside of the bankruptcy estate. An expansion of this type lacks support in the Bankruptcy Code.

14. Further, PCI objects to the Motion based on the lack of an 'opt-out' provision, or in the alternative, short deadlines or time limitations for the resolution of claims through the procedures set forth in the proposed order. This shortcoming commands importance, because the proposed order would prevent the Court from presiding over any motions for relief from the automatic stay, and parties, who file such motion, would be required to endure harm without recourse or remedy until the Debtor decided that the claims procedures have concluded.<sup>4</sup> In essence, the proposed order would prevent the Court from serving its most basic function. This procedure for resolving claims may also require parties to establish the legal basis for the relief sought on multiple occasions, for example, through litigation under the claims procedures and then before the Court on an appropriate motion. Such measures are hardly equitable, and they fail to achieve the expressly-stated purpose for the enactment of the claims procedures.

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<sup>3</sup> Indeed, PCI has rights under certain insurance policies and rights to proceeds under policies issued to Exide; these proceeds and rights are not Debtor's, they are PCI's, and the insurers who issued such policies are not entitled to the protections of the bankruptcy court.

<sup>4</sup> In some instances, the claims procedures may require a party, who is in the process of suffering irreparable harm, to forgo their properly-filed claim against the bankruptcy estate in order to escape the claims procedures and present their motion for relief from the automatic stay.

Moreover, the tactics of delay will cause the legal fees of creditors and other third parties to rise such that these parties may elect not to pursue their rights.

**WHEREFORE**, Pacific Chloride International respectfully requests that this Honorable Court deny the Debtor's Motion for an Order to Implement Claims Resolution Procedures for Certain Contingent, Unliquidated, and/or Litigation Claims.

Dated: November 7, 2013  
Wilmington, Delaware

**McCARTER & ENGLISH, LLP**

*/s/ Katharine L. Mayer*

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*Attorneys for Pacific Chloride  
International*

# **EXHIBIT A**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
02/07/2011

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b> MARSH USA, INC. TWO ALLIANCE CENTER 3560 LENOX ROAD, SUITE 2400 ATLANTA, GA 30326	<b>CONTACT NAME:</b> _____	
	<b>PHONE (A/C, No, Ext):</b> _____	<b>FAX (A/C, No):</b> _____
573029-CAS-GAWU-10-11	<b>E-MAIL ADDRESS:</b> _____	
	<b>PRODUCER CUSTOMER ID #:</b> _____	
<b>INSURED</b> EXIDE TECHNOLOGIES 13000 DEERFIELD PARKWAY, BLDG. 200 MILTON, GA 30004	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A:</b> Zurich American Insurance Company	NAIC # 16535
	<b>INSURER B:</b> American Zurich Insurance Company	40142
	<b>INSURER C:</b> National Union Fire Ins Co Pittsburgh PA	19446
	<b>INSURER D:</b> _____	_____
	<b>INSURER E:</b> _____	_____

**COVERAGES**                      **CERTIFICATE NUMBER:** ATL-002444378-22                      **REVISION NUMBER:** 14

**THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> SIR: \$1,000,000 GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOG		X	GLO 9260592-03	07/01/2010	07/01/2011	EACH OCCURRENCE \$ 1,500,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ _____ PERSONAL & ADV INJURY \$ 1,500,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 _____ \$ _____
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		X	BAP 8978592-14	07/01/2010	07/01/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ _____ BODILY INJURY (Per accident) \$ _____ PROPERTY DAMAGE (Per accident) \$ _____ _____ \$ _____ _____ \$ _____
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 25,000			15972397	07/01/2010	07/01/2011	EACH OCCURRENCE \$ 9,000,000 AGGREGATE \$ 9,000,000 _____ \$ _____ _____ \$ _____
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N	WCB978590-14 (AOS) WCB978591-14 (MA, WI)	07/01/2010 07/01/2010	07/01/2011 07/01/2011	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)**  
 RE: 6801 WESTPORT AVENUE, SHREVEPORT, LA  
 PACIFIC CHLORIDE, INC. IS INCLUDED AS ADDITIONAL INSURED WITH RESPECT TO THE GENERAL LIABILITY AND AUTO LIABILITY POLICIES, WHERE REQUIRED BY WRITTEN CONTRACT. A WAIVER OF SUBROGATION IN FAVOR OF PACIFIC CHLORIDE, INC. IS INCLUDED ON THE ABOVE GENERAL LIABILITY POLICY AND WORKERS' COMPENSATION POLICY IF REQUIRED BY WRITTEN CONTRACT.

<b>CERTIFICATE HOLDER</b>  PACIFIC CHLORIDE, INC. 200 SHULZ DRIVE REDBANK, NJ 07701	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE of Marsh USA Inc.  Ted L. Young <i>Ted L. Young</i>

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**EVIDENCE OF PROPERTY INSURANCE**

DATE (MM/DD/YYYY)  
02/08/2011

**THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.**

<b>AGENCY</b> MARSH USA, INC. TWO ALLIANCE CENTER 3560 LENOX ROAD, SUITE 2400 ATLANTA, GA 30326  573029-Full-Prop-10-11 <b>FAX (A/C, No):</b> _____ <b>E-MAIL ADDRESS:</b> _____ <b>CODE:</b> _____ <b>SUB CODE:</b> _____ <b>AGENCY CUSTOMER ID #:</b> _____		<b>PHONE (A/C, No, Ext):</b> _____  <b>COMPANY (See Schedule A)</b>	
<b>INSURED</b> EXIDE TECHNOLOGIES 13000 DEERFIELD PARKWAY, BLDG. 200 MILTON, GA 30004		<b>LOAN NUMBER</b>	<b>POLICY NUMBER ATTACHED</b>
		<b>EFFECTIVE DATE</b> 09/01/2010	<b>EXPIRATION DATE</b> 09/01/2011
		<input type="checkbox"/> <b>CONTINUED UNTIL TERMINATED IF CHECKED</b>	
<b>THIS REPLACES PRIOR EVIDENCE DATED:</b> _____			

**PROPERTY INFORMATION**

**LOCATION/DESCRIPTION**  
 RE: 8901 Westport Avenue, Shreveport, Louisiana (a tract in the Southeast Quarter of Section 22, Township 17 North, Range 15 West, Caddo Parish, Louisiana)

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

**COVERAGE INFORMATION**

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
All Risk of direct physical loss or damage to real property on a replacement cost basis, subject to policy terms, conditions and exclusions. Coverage includes, but is not limited to fire, extended perils such as vandalism, malicious mischief, flood, earthquake and boiler & machinery.  Special sublimits and/or deductibles may apply.  See Below Attachment	400,000,000	2,000,000

**REMARKS (Including Special Conditions)**

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**ADDITIONAL INTEREST**

ATL-002566649-14

<b>NAME AND ADDRESS</b>  PACIFIC CHLORIDE, INC. 200 SHULZ DRIVE REDBANK, NJ 07701	<input type="checkbox"/> <b>MORTGAGEE</b>	<b>ADDITIONAL INSURED</b>
	<input type="checkbox"/> <b>LOSS PAYEE</b>	
<b>LOAN #</b> _____		
<b>AUTHORIZED REPRESENTATIVE</b> of Marsh USA Inc. Ted L. Young <i>Ted L. Young</i>		

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<b>ADDITIONAL INFORMATION</b>		ATL-002566649-14	DATE (MM/DD/YYYY) 02/08/2011
<b>PRODUCER</b> MARSH USA, INC. TWO ALLIANCE CENTER 3560 LENOX ROAD, SUITE 2400 ATLANTA, GA 30326  573029-Full-Prop-10-11	<b>COMPANIES AFFORDING COVERAGE</b>		
	COMPANY		
<b>INSURED</b> EXIDE TECHNOLOGIES 13000 DEERFIELD PARKWAY, BLDG. 200 MILTON, GA 30004	COMPANY		
	COMPANY		

**TEXT**

The Allied World Assurance Company Ltd. and the Arch Insurance (Bermuda) placements were made by Bowring Marsh (Bermuda) Limited. Marsh USA Inc. has only acted in the role of a consultant to the client with respect to this placement, which is indicated here for your convenience.

<b>CERTIFICATE HOLDER</b>	
PACIFIC CHLORIDE, INC. 200 SHULZ DRIVE REDBANK, NJ 07701	AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Ted L. Young <i>Ted L. Young</i>

<b>ADDITIONAL INFORMATION</b>		ATL-002566649-10	DATE (MM/DD/YYYY) 02/07/2011
<b>PRODUCER</b> MARSH USA, INC. TWO ALLIANCE CENTER 3560 LENOX ROAD, SUITE 2400 ATLANTA, GA 30326  573029-Mast-Prop-10-11	<b>COMPANIES AFFORDING COVERAGE</b>		
	COMPANY		
	COMPANY		
<b>INSURED</b> EXIDE TECHNOLOGIES 13000 DEERFIELD PARKWAY, BLDG. 200 MILTON, GA 30004	COMPANY		
	COMPANY		
<b>TEXT</b>  COMPANY SCHEDULE - 9/1/2010 - 9/1/2011:  ACE American Insurance Company - PGLN05098595 Zurich American Insurance Company - PPR6552592-01 National Union Fire Insurance Company of Pittsburgh, Pennsylvania - 58426972 Great Lakes Reinsurance (UK) PLC - 0559250110 Lloyds of London - DP780910 Allianz Global Risks US Insurance Company - CLP3011817 XL Insurance America, Inc. - US00012196PR10A Westport Insurance Corporation - 31373389 Allied World Assurance Company, Ltd. - P000431009 Arch Insurance (Bermuda) a division of Arch Reinsurance Ltd. - PRP002298303  The Allied World Assurance Company Ltd. and the Arch Insurance (Bermuda) placements were made by Bowring Marsh (Bermuda) Limited. Marsh USA Inc. has only acted in the role of a consultant to the client with respect to this placement, which is indicated here for your convenience.			

**CERTIFICATE HOLDER**

PACIFIC CHLORIDE, INC. 200 SHULZ DRIVE REDBANK, NJ 07701	AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Ted L. Young <i>Ted L. Young</i>
--	--

**CERTIFICATE OF SERVICE**

I, Katharine L. Mayer, hereby certify that on November 7, 2013, I caused a true and correct copy of the foregoing *Objection of Pacific Chloride Incorporated to Debtor's Motion for an Order to Implement Claims Resolution Procedures for Certain Contingent, Unliquidated, and/or Litigation Claims* to be served upon the below listed parties by First Class U.S. Mail.

/s/ Katharine L. Mayer

Katharine L. Mayer (DE # 3758)

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