

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11  
 EXIDE TECHNOLOGIES, : Case No. 13-11482 (KJC)  
 Debtor.<sup>1</sup> : **Related Docket No. 1131, 1156**  
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**ORDER UNDER 11 U.S.C. §§ 327(a) AND 328(a), FED. R. BANKR. P. 2014(a),  
 AND DEL. BANKR. L.R. 2014-1 AUTHORIZING EMPLOYMENT AND  
 RETENTION OF ERNST & YOUNG LLP AS TAX ADVISORY,  
 VALUATION, ACCOUNTING AND REPORTING SERVICES PROVIDER  
 TO THE DEBTOR NUNC PRO TUNC TO NOVEMBER 21, 2013**

Upon the Application of the Debtor for Entry of an Order Under 11 U.S.C. §§ 327(a) and 328(a), Fed. R. Bankr. P. 2014(a), and Del. Bankr. L.R. 2014-1 Authorizing Employment and Retention of Ernst & Young LLP as Tax Advisory, Valuation, Accounting and Reporting Services Provider to the Debtor *Nunc Pro Tunc* to November 21, 2013<sup>2</sup> (the "Application")<sup>3</sup>; and the Court having jurisdiction to consider the Application and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157; and venue being proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application being adequate and appropriate under the particular circumstances; and upon consideration of the Gunning Affidavit in support of the Application and the other motions,

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<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 2730. The Debtor's corporate headquarters are located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.  
<sup>2</sup> Retention of Ernst & Young will be *nunc pro tunc* November 21, 2013, to ensure that any work performed by Ernst & Young prior to entry of this Order will be covered by this Order.  
<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Application.

pleadings, and papers filed in the Chapter 11 Case, the Court finds the terms and conditions of Ernst & Young's employment, including but not limited to the Fee Structure and Indemnification Provisions set forth in the Engagement Letters, are reasonable as required by section 328(a) of the Bankruptcy Code, that the relief sought in the Application is in the best interests of the Debtor's estate, its creditors and other parties-in-interest, and that the legal and factual bases set forth in the Application and the Gunning Affidavit establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and the Court being satisfied based on the representations made in the Application and the Gunning Affidavit that (a) Ernst & Young and its officers and employees do not hold or represent an interest adverse to the Debtor's estate and (b) Ernst & Young and its officers and employees are "disinterested persons" as defined in section 101(14) of the Bankruptcy Code and as required by section 327(a) of the Bankruptcy Code, Bankruptcy Rule 2014 and Local Bankruptcy Rule 2014-1; and after due deliberation and sufficient cause appearing therefor, it is hereby

**ORDERED, ADJUDGED AND DECREED that:**

1. The Application is GRANTED as provided herein, *nunc pro tunc* to November 21, 2013.
2. In accordance with sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rule 2014, and Local Bankruptcy Rule 2014 and 2016-2(h), the Debtor is authorized to employ and retain Ernst & Young in accordance with the terms and conditions set forth in the Engagement Letters. The Debtor is authorized to pay fees and reimburse expenses and to provide indemnification and/or reimbursement of expenses to Ernst & Young on the terms and the times specified in the Engagement Letters, *nunc pro tunc* to November 21, 2013.

3. The provisions set forth in the Engagement Letters, which are attached to the Gunning Affidavit as Exhibits A-1, A-2, and A-3, are approved in all respects except as limited or modified herein.

4. Ernst & Young shall be compensated pursuant to section 330(a) of the Bankruptcy Code in accordance with the terms of the Engagement Letters, subject to the procedures set forth in the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and any other applicable orders of this Court.

5. None of the fees payable to Ernst & Young shall constitute a “bonus” or fee enhancement under applicable law.

6. Notwithstanding any provision to the contrary in this Order, the U.S. Trustee shall have the right to object to Ernst & Young’s request(s) for interim and final compensation and reimbursement based on the reasonableness standard provided in section 330 of the Bankruptcy Code, not section 328(a) of the Bankruptcy Code. This Order and the record relating to the Court’s consideration of the Application shall not prejudice or otherwise affect the rights of the U.S. Trustee to challenge the reasonableness of Ernst & Young’s fees under the standard set forth in the preceding sentence. Accordingly, nothing in this Order or the record shall constitute a finding of fact or conclusion of law binding the U.S. Trustee, on appeal or otherwise, with respect to the reasonableness of Ernst & Young’s fees.

7. The Debtor shall be bound by the Indemnification Obligations and will indemnify and hold harmless Ernst & Young and the EY Persons (as defined in the Engagement Letters), subject to the following:

- a) Ernst & Young shall not be entitled to indemnification or reimbursement of expenses pursuant to the Engagement Letters unless such indemnification or reimbursement of expenses are approved by the Court;

- b) Notwithstanding any provision of the Engagement Letters to the contrary, the Debtor shall have no obligation to indemnify or provide reimbursement of expenses to Ernst & Young for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen from Ernst & Young's gross negligence or willful misconduct, (ii) for a contractual dispute in which the Debtor alleges the breach of Ernst & Young's contractual obligations, unless the Court determines that indemnification or reimbursement of expenses would be permissible pursuant to In re United Artists Theatre Company, et al., 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to Ernst & Young's gross negligence or willful misconduct, but determined by this Court, after notice and a hearing, to be a claim or expense for which Ernst & Young should not receive indemnity or reimbursement of expenses under the terms of the Engagement Letters, as modified by this Order;
- c) If, before the earlier of (i) the entry of an order confirming a Chapter 11 plan in this case (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing this Chapter 11 case, Ernst & Young believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification or expense reimbursement obligations under the Engagement Letters (as modified by this Order), including without limitation any advancement of defense costs, Ernst & Young must file an application therefor in this Court, and the Debtor may not pay any such amounts to Ernst & Young before the entry of an order by this Court approving any such payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request by Ernst & Young for indemnification or reimbursement of expenses, and is not intended to limit the duration of the Debtor's obligations to indemnify or reimburse expenses of Ernst & Young;

8. The Debtor and Ernst & Young are authorized to take all actions necessary to effectuate the relief granted pursuant to the Order.

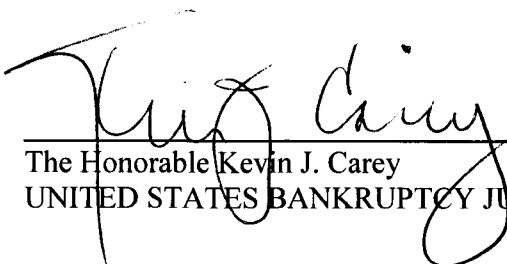
9. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, the Order shall be immediately effective and enforceable upon its entry.

10. The relief granted herein, including, without limitation, approval pursuant to section 328(a) of the Bankruptcy Code of the Fee Structure and the Indemnification Obligations, shall be binding upon any chapter 11 trustee appointed in the Chapter 11 Case, or

upon any chapter 7 trustee appointed in the event of a subsequent conversion of the Chapter 11 Case to a case under chapter 7.

11. To the extent that the Order is inconsistent with the Engagement Letters, the terms of the Order shall govern.

Dated: Wilmington, Delaware  
Dec 17, 2013

  
The Honorable Kevin J. Carey  
UNITED STATES BANKRUPTCY JUDGE