

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

In re ) Chapter 11  
EXIDE TECHNOLOGIES, ) Case No. 13-11482 (KJC)  
 )  
 )  
Debtor. )

**THE WATTLES COMPANY’S NOTICE OF INTENT TO ISSUE  
SUBPOENA DUCES TECUM PURSUANT TO FRCP 45(a)(4)**

Please take notice that pursuant to Rule 45(a)(4) of the Federal Rules of Civil Procedure, made applicable to this contested matter by Federal Rule of Bankruptcy Procedure 9016, The Wattles Company (“Wattles”) intends to issue a subpoena for the production of documents on or after October 28, 2014 in the State of New York to the Custodian of Records of **ACE American Insurance Company**. A copy of the subpoena is attached hereto, and the documents to be sought by subpoena are identified in the attached “Exhibit A.” The documents subject to the subpoena shall be delivered to the law office Meister Seelig & Fein, LLP, 125 Park Avenue, 7<sup>th</sup> Floor, New York, NY 10017, no later than Wednesday, November 12, 2014, at 2:00 p.m.

Date: October 15, 2014  
Wilmington, DE

SULLIVAN · HAZELTINE · ALLINSON LLC



\_\_\_\_\_  
Elihu E. Allinson III (No. 3476)  
901 North Market Street, Suite 1300  
Wilmington, DE 19801  
Tel: (302) 428-8191

and

MEISTER SEELIG & FEIN, LLP  
Christopher J. Major, Esq.  
125 Park Avenue, 7<sup>th</sup> Floor  
New York, NY 10017  
T (212) 655-3579

*Attorneys for The Wattles Company*

B257 (Form 257 – Subpoena to Produce Documents, Information, or Objects or To Permit Inspection in a Bankruptcy Case or Adversary Proceeding) (12/13)

UNITED STATES BANKRUPTCY COURT

District of DELAWARE

In re EXIDE TECHNOLOGIES

Debtor

(Complete if issued in an adversary proceeding)

Case No. 13-11482 (KJC)

Chapter 11

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Custodian of Records for ACE American Insurance Company, 1133 Avenue of the Americas, NY, NY (Name of person to whom the subpoena is directed)

[X] Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Exhibit A.

Table with 2 columns: PLACE (Meister Seelig & Fein LLP, 125 Park Avenue, 7th Floor, New York, NY 10017) and DATE AND TIME (Wednesday, November 12, 2014 by 2:00 p.m. EST)

[ ] Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Table with 2 columns: PLACE and DATE AND TIME

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/15/2014

CLERK OF COURT

OR

Handwritten signature of Christopher J. Major

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) The Wattles Company, who issues or requests this subpoena, are: Christopher J. Major, Esq. Meister Seelig & Fein LLP, 125 Park Avenue, 7th Fl., New York, NY 10017; 212.655.3500; cjm@msf-law.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**PROOF OF SERVICE**

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (name of individual and title, if any): \_\_\_\_\_  
on (date) \_\_\_\_\_.

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_  
\_\_\_\_\_ on (date) \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true and correct.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information concerning attempted service, etc.:

**Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)**  
**(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)**

**(c) Place of compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) *Contempt.* The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

## EXHIBIT A

### DEFINITIONS AND INSTRUCTIONS

A. The term "documents" as used herein refers to all written or graphic matter, however produced or reproduced, of every kind and description in the actual or constructive possession, custody, care or control of the responding party or parties, or any of their representatives or agents, including but not limited to papers, letters, tangible things, correspondence, electronic communications, telegrams, telexes, memoranda, inter-office communications, contracts, agreements, working papers, computer data (as defined in paragraph A.1 below), magnetic tapes, magnetic discs, certificates, binders, policies.

A.1. The term "computer data" means any and all data or information contained or stored in a computerized format and/or maintained on computer equipment of any kind or nature, including but not limited to: (a) disks, computer tapes, and information stored on a hard drive; (b) a detailed description of data stored on computer hard drive(s), disks, or media of any type including any type of storage media and size of data file; (c) a detailed description of how such data is maintained; (d) the software program and version utilized for the creation, data collection, and/or maintenance of such data; (e) electronic copies of all computer data in its original file format; and (f) any and all metadata associated therewith. "Computer data" includes electronic communications as defined below.

A.2. "Electronic communications" shall include any and all electronically created, generated, transmitted, viewed, or received communications, including but not limited to electronic mail ("e-mail"), instant messages, internet and network chat communications, status updates, check-ins, wall posts, blog entries, posts, and comments, and electronic bulletin board messages and posts.

B. The term "you" means you personally and any of your employees or agents.

C. In responding to this Subpoena, you are required to produce all documents in your possession, custody, or control or otherwise available to your employees, representatives, and/or agents, including, without limitation by reason of enumeration, documents in the possession of your attorneys or their investigators, accountants, consultants, or associates, whether past or present.

D. The term "Exide" refers collectively to Exide Technologies, Exide Technologies, Inc., Exide Corporation, GBW Corporation, General Battery Corporation, and General Battery of Washington, GNB Technologies, and Electric Storage Battery Company.

E. If any document is withheld under claim of privilege, the privilege involved shall be stated and each document shall be identified by date, author, recipient(s), and subject matter (without disclosing its contents) sufficient to allow its description to the court for ruling thereon.

F. If you are unable to produce any document called for by this Subpoena, state the reason why you are unable to produce such document and identify the document with as much accuracy as possible.

G. "Relating or pertaining to" as used herein shall mean any document which is relevant in any way to the subject matter, including without limitation to the foregoing, all documents which contain, record, reflect, summarize, evaluate, comment upon, transmit or discuss the subject matter of any request, as well as drafts, work papers, or other preparation materials, exhibits shown or circulated at any meeting, and/or the text or notes of any oral or written presentation or conversation.

#### **DOCUMENTS TO BE PRODUCED**

1. Complete *certified* copies of any and all insurance policies issued by ACE American Insurance Company ("ACE") to Exide, or otherwise providing coverage for Exide, with policy periods effective at any time during 2004 and also at any time from 2006 to 2012. Specifically, the documents to be produced are certified copies of the insurance policies numbered: PRPD35648161 (2004), PGL N0 19 28 24 7 (2006), PGL N0 42 85 93 1 (2007), PGL N0 50 61 97 0 (2008), PGL N0 50 82 55 9 (2009), PGL N0 51 07 16 7 (2011), with the 2010 and 2012 policy numbers presently unknown.

2. Complete copies of any and all insurance policies issued by ACE to Exide, or otherwise providing coverage for Exide, with policy periods effective from 1984 to 2013. In the event any complete policy is not provided, please produce copies of all insurance policy forms potentially applicable to any such policy with reference to the applicable policy period(s).

3. Complete copies of any and all insurance policies issued by any other insurance or indemnity company with who ACE shared potential liability with during the policy periods from 1984 to 2013.

**CERTIFICATE OF SERVICE**

I, Elihu E. Allinson III, do hereby certify I am not less than 18 years of age and that on this 15th day of October 2014, I caused a copy of *The Wattles Company's Notice of Intent to Issue Subpoena Duces Tecum Pursuant to FRCP 45(a)(4)* to be served upon the parties listed below via U.S. Mail, First Class, postage pre-paid.

Jennifer Madden  
Skadden, Arps, Slate, Meagher & Flom LLP  
155 N. Wacker Drive  
Chicago, IL 60606

Jason M. Liberi  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Rodney Square  
920 N. King Street  
Wilmington, DE 19801

Scott J. Leonhardt  
Andrew Roth-Moore  
The Rosner Law Group LLP  
824 N. Market Street, Suite 810  
Wilmington, DE 19801

Custodian of Records for  
ACE American Insurance Company  
1133 Avenue of the Americas  
New York, NY 10036

Under penalty of perjury, I declare the foregoing to be true and correct.

October 15, 2014  
Date

/s/ E.E. Allinson III  
Elihu E. Allinson III