

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:) Chapter 11
)
EXIDE TECHNOLOGIES,) Case No. 13-11482 (KJC)
)
Debtor.) Ref: D.I. 166, 238, 252
) **Objection Deadline: At Hearing**
_____) **Proposed Hearing Date: July 11, 2013, at 10 a.m.**

**EMERGENCY MOTION OF PACIFIC CHLORIDE INC. AND ANSELL
HEALTHCARE PRODUCTS LLC REQUESTING A CONTINUANCE OF THE
HEARING TO CONSIDER THE DEBTOR'S MOTION FOR ENTRY
OF AN ORDER AUTHORIZING (I) REJECTION OF SHREVEPORT
LEASE AND SHREVEPORT CONTRACTS AS OF THE SURRENDER
DATE AND (II) ABANDONMENT OF PERSONAL PROPERTY**

Pacific Chloride Incorporated ("Pacific Chloride") and Ansell Healthcare Products LLC (together with Pacific Chloride, "Ansell")², by their undersigned counsel, hereby submit this emergency motion requesting a continuance of the hearing consider the Debtor's Motion for Entry of an Order Authorizing (I) Rejection of Shreveport Lease and Shreveport Contracts as of the Surrender Date and (II) Abandonment of Personal Property (D.I. 166) (the "Motion"), filed by Exide Technologies ("Exide" or the "Debtor"),³

Ansell timely filed a response objecting to the Motion (D.I. 252), on July 3, 2013. The Louisiana Department of Environmental Quality ("LDEQ") also filed objections to the Motion. (D.I. 238). Contemporaneously with serving its objections to the Motion,

² Pacific Chloride Incorporated and Ansell Healthcare Products LLC are affiliate companies, both being indirect subsidiaries of the Australian public company, Ansell Limited.

³ Narrowly, Ansell has not objected to that portion of the Motion directed to what the Debtor has defined as the "Shreveport Contracts" – which contracts do not involve the Shreveport property or Pacific Chloride as its Landlord.

Ansell served a set of interrogatories and document requests upon Exide related to the Motion. *See* D.I. 254 (Notice of Service). On the basis of the objections filed by LADEQ and by Ansell as well as the discovery requests that Ansell served on the Debtor pertaining to the Motion, Ansell respectfully requests that the hearing on the Motion be continued.

On Monday July 8, 2013⁴, Ansell's counsel discussed a continuance with Debtor's counsel, so that Ansell could obtain the discovery it seeks prior to the hearing. The Debtor's initial, singular concern was that rent payment obligations be abated. Ansell therefore proposed a continuance in a manner that would not prejudice the Debtor with respect to rent payment obligations, by proposing to stipulate that, in the event that the rejection of the lease is granted by the Court, Ansell would not seek to hold the Debtor to postpetition rent as an administrative claim beyond what was owed by the originally scheduled hearing date of July 11, 2013.⁵ But late in the day, Debtor's counsel rejected that proposal, insisting on several other conditions and refusing to agree to respond in good faith to the discovery requests served (as compared with objecting to them wholesale).

In addition, the Skadden firm, Debtor's counsel in this matter, represents Ansell in certain merger and acquisition matters and is currently representing Ansell on a potential transaction, and Skadden's New York office has been notified of this conflict of interest. Ansell believes that the Debtor's Special Conflicts Counsel needs to represent the Debtor in this matter.

⁴ The offices of counsel for Ansell were closed for Independence Day on both July 4 and 5, 2013.

⁵ That would of course be without prejudice to all rejection and other damages claims.
6577988/

These circumstances necessitated this Motion for Continuance of the Debtor's Motion, for which the hearing date is July 11, 2013 at 10:00 a.m.

I. BACKGROUND

1. The Debtor's Motion seeks (a) to reject Exide's lease of certain property in Shreveport, Louisiana where it formerly operated a lead-battery manufacturing plant, and (b) to abandon all its personal property at the site. Pacific Chloride is the Landlord under the lease.

2. A fire occurred on the Shreveport property in January, 2011 that substantially damaged the manufacturing plant, including the structure, the fixtures and equipment.

3. As the Debtor asserts in the Motion, and as the lease attached to the Motion reflects, the Debtor was obligated under the lease to obtain insurance coverage on the property, including property insurance and liability insurance, and to have both the Landlord and Exide named as insureds under the policies. The Debtor did obtain such insurance, and also maintained a policy covering certain environmental liabilities.

4. Although the fire took place in January 2011, and although the Debtor and Ansell (on behalf of Pacific Chloride) had been in discussions with the insurers on the property since that time regarding recovering for the damage at the property, the Debtor asserted for the first time, by way of a footnote in the Motion, that the Landlord was *not* specifically endorsed on "the Insurance Policy" (presumably a reference to the Debtor's property insurance policy, though without so stating and without mention of the umbrella, excess, and liability policies). See Motion, p. 4, fn.4.

5. The Debtor avers that it served notice of the Motion upon “Louisiana state and local environmental authorities,” but says nothing about the current state of the property from an environmental standpoint.

II. THE REQUEST FOR A CONTINUANCE

A. Insurance-Related Issues are Intertwined with the Lease and Any Rejection or Abandonment of the Debtor’s Property Rights or Interests Under It, and Ansell Is Entitled to the Discovery It Seeks Prior to the Hearing

6. Plainly, in view of the fire on the premises, the rights and ability to collect insurance proceeds due as a result of the property damage, any rights to such insurance proceeds are an important aspect of the tenancy that the Debtor is proposing to reject. Indeed, the Debtor states in the Motion that the discussions with the insurers are “still ongoing, and no insurance payments have been made for the repair of the fire damages at the Shreveport Facility building.” Motion, p. 4.

7. Yet the Debtor has continuously refused to furnish the Landlord copies of such policies, and other pertinent, related insurance information. In its objections, Ansell points out, *inter alia*, that case law recognizes that some types of contract or lease obligations – in particular, ones that do not translate directly into “claims” against the debtor – survive a contract or lease rejection, and are not terminated as a result of a rejection. Ansell submits that the lease obligations pertaining to Ansell’s rights to collect from insurance fall in this category; and that any order entered with respect to the Motion and the lease should acknowledge Pacific Chloride’s full rights and property interests to recover under the insurance coverage in place for the Premises and the Shreveport Facility and are not impeded by a rejection of the Shreveport Lease.

8. The status of the insurance presents several other mixed legal and factual issues as well, as Ansell has set forth in its Objections, for which Ansell is entitled to

6577988/

discovery and which need to be established before the Court can determine just what is being rejected and abandoned. These include, by way of example, whether a debtor under these circumstances has any right to receive or retain insurance proceeds not yet paid, or already paid, for restoration of the premises or any equipment thereon, or whether such rights are in effect being abandoned to the Landlord (since the Debtor is proposing to abandon *all* its personal property associated with the Shreveport property).

9. The insurance coverage that Exide obtained with respect to the Shreveport property is inextricably tied to its lease of that property – Exide could not have obtained insurance coverage on the property without having a property interest in it, whether by leasehold, ownership or otherwise.

10. Ansell has served discovery on the Debtor related to the insurance that was obtained on the property, and Ansell maintains that it is entitled to receive such discovery from the Debtor before a hearing is held on the Motion.

11. The Debtor has not yet responded to Ansell's discovery requests; nor has the Debtor served objections to the requests.

B. The Request to Approve Abandonment of Property Is Premature

12. The Debtor's request for approval of its proposed abandonment of all its (unidentified) personal property connected with the lease and the Shreveport property is premature.

13. The LDEQ objected to the Motion, asserting, *inter alia*, that:

- a. "Abandoned hazardous and solid waste can present an imminent hazard to human health and the environment, and proper management of any such material generated by, and/or in possession of, the Debtor is mandated by state and federal laws, in particular, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq*, and the Louisiana Environmental Quality Act, La. R.S. 30: 2001 *et seq*."; and

- b. “[T]he LDEQ has been unable to gain access to the site to ensure that no solid or hazardous waste associated with Debtor’s prior facility operations, and/or the 2011 fire, remains on the site. Until the LDEQ is able to access the site, it is unable to verify that all solid and hazardous waste associated with the Debtor’s operations has been removed and any threat posed to human health and the environment by any such material has been abated.”

LDEQ’s Objections, p.2.

14. Ansell has similarly objected that the abandonment request is premature until the Debtor has provided information on the environmental status of the property.

15. Ansell has served discovery on Exide to obtain such information, in advance of any hearing on the Motion, and is entitled to receive it.

16. The Debtor has not yet responded to Ansell’s discovery requests pertaining to the environmental issues; nor has the Debtor served objections to the requests.

C. A Continuance Will Not Prejudice the Debtor

17. A continuance of the hearing will not be prejudicial to the Debtor.

18. On the afternoon of Monday July 8, 2013, Ansell’s counsel discussed a continuance with Debtor’s counsel, so that Ansell could obtain the discovery it seeks prior to the hearing. It appeared that the Debtor’s initial, singular concern was that rent payment obligations be abated; Ansell was willing to accommodate that concern, and proposed a continuance in a manner that would not prejudice the Debtor with respect to rent payment obligations owed beyond the originally scheduled hearing date of July 11, 2013, *i.e.*, by proposing to stipulate that, in the event that the Court grants Debtor’s request to reject the lease, Ansell would not seek to hold the Debtor to postpetition rent as

an administrative claim beyond what was owed by the original hearing date.⁶ In turn, the hearing could be continued to a date that would allow the Debtor first to respond to the discovery.

19. But late in the day, Debtor's counsel rejected that proposal, demanding several other conditions, while also refusing to agree to respond in good faith to the discovery requests served (as compared with objecting to them wholesale).

20. That response necessitated the filing of this Motion for Continuance.

21. Ansell remains willing to agree that the Debtor's exposure on ongoing rent be limited, provided that the Debtor responds in good faith to the discovery Ansell served on it.

III. SKADDEN'S CONFLICT OF INTEREST

22. Ansell's general counsel has notified the Skadden firm, Debtor's counsel in this matter, of the presence of a conflict of interest, due to the fact that Skadden represents Ansell in certain merger and acquisition matters and is currently representing Ansell on a potential transaction; and accordingly, Ansell believes that the Debtor's Special Conflicts Counsel, the Pachulski firm, needs to represent the Debtor in this matter.

23. Skadden has not responded.

IV. NOTICE


24. Ansell has served notice of this Motion by hand delivery, fax or email on (a) the "core" list of interested parties requiring notice as identified in the Notice of

⁶ That would of course be without prejudice to all rejection and other damages claims. The Debtor will continue to seek to have the rejection made effective on the date in late June that Ansell received a set of keys to the premises from Exide.

Motion as to the Debtor's Motion (D.I. 166), which list includes the Debtor, its lenders, the Creditor's Committee, and the Office of the U.S. Trustee; (b) the Louisiana Department of Environmental Quality; and (c) the United States Attorney's Office. In view of the relief requested, Ansell submits that no other or further notice is required.

WHEREFORE, Pacific Chloride Incorporated and Ansell Healthcare Products, LLC respectfully request that this Court enter an order continuing the hearing on the Motion, with respect to the Shreveport Lease and the Personal Property related thereto, to a later date that will enable Ansell to receive the discovery Ansell has sought from the Debtor in connection with the Motion, and such other relief as the Court deems proper. A proposed form of order is attached.

MORRIS JAMES LLP



Douglas N. Candeb (Bar No. 4211)
500 Delaware Avenue, Suite 1500
P.O. Box 2306
Wilmington, Delaware 19899-2306
Telephone: (302) 888-6800
Facsimile: (302) 571-1750
Email: dcandeb@morrisjames.com

Attorneys for Pacific Chloride Incorporated
and Ansell Healthcare Products, LLC

Dated: July 9, 2013

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)	Chapter 11
)	
EXIDE TECHNOLOGIES,)	Case No. 13-11482 (KJC)
)	
Debtor.)	Ref: D.I. 166, 238, 252
)	Objection Deadline: At Hearing
_____)	Proposed Hearing Date: July 11, 2013, at 10 a.m.

**NOTICE OF EMERGENCY MOTION OF
PACIFIC CHLORIDE INC. AND ANSELL HEALTHCARE
PRODUCTS LLC REQUESTING A CONTINUANCE OF THE
HEARING TO CONSIDER THE DEBTOR’S MOTION FOR ENTRY
OF AN ORDER AUTHORIZING (I) REJECTION OF SHREVEPORT
LEASE AND SHREVEPORT CONTRACTS AS OF THE SURRENDER
DATE AND (II) ABANDONMENT OF PERSONAL PROPERTY**

TO: See attached Service List.

PLEASE TAKE NOTICE that on July 9, 2013, Pacific Chloride Incorporated (“Pacific Chloride”) and Ansell Healthcare Products LLC (together with Pacific Chloride, “Ansell”), by and through its undersigned counsel, filed an *Emergency Motion of Pacific Chloride Inc. and Ansell Healthcare Products LLC Requesting a Continuance of the Hearing to Consider the Debtor’s Motion for Entry of an Order Authorizing (I) Rejection of Shreveport Lease and Shreveport Contracts as of the Surrender Date and (II) Abandonment of Personal Property* (the “Continuance Motion”)¹ with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

PLEASE TAKE FURTHER NOTICE that responses or objections to the Continuance Motion, if any, may be heard at the time the motion is heard at the hearing (the “Objection Deadline”).

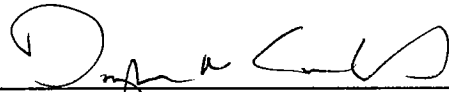
¹ If you have received only this notice and wish to review the entire Motion, you may obtain a full copy of the Motion by contacting the undersigned counsel.

PLEASE TAKE FURTHER NOTICE that a hearing on the motion will be held before the Honorable Kevin J. Carey, U.S. Bankruptcy Judge, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Courtroom No. 5, Wilmington, Delaware, on **July 11, 2013 at 10:00 a.m. (Eastern Time)**. Only objections made by the objection deadline will be considered by the bankruptcy court at such hearing.

PLEASE TAKE FURTHER NOTICE that if you fail to respond in accordance with this notice, the Bankruptcy Court may grant the relief demanded by the Motion without further notice or hearing.

Dated: July 9, 2013

MORRIS JAMES LLP



Douglas N. Candeb (Bar No. 4211)
500 Delaware Avenue, Suite 1500
P.O. Box 2306
Wilmington, Delaware 19899-2306
Telephone: (302) 888-6800
Facsimile: (302) 571-1750
Email: dcandeb@morrisjames.com

Attorneys for Pacific Chloride Incorporated
and Ansell Healthcare Products, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

ORDER CONTINUING HEARING

Upon consideration of the *Emergency Motion of Pacific Chloride Inc. and Ansell Healthcare Products LLC Requesting a Continuance of the Hearing to Consider the Debtor’s Motion for Entry of an Order Authorizing (I) Rejection of Shreveport Lease and Shreveport Contracts as of the Surrender Date and (II) Abandonment of Personal Property* (the “Continuance Motion”), and any response thereto, and upon due notice and a hearing, and upon the representation of the movants that, if the Debtor’s Motion (D.I. 166) is continued in all respects pertaining to the Shreveport Lease and the Debtor’s Personal Property connected with said lease, and if the Motion is later granted, Ansell will not the lease rejection date to be a date later than the originally scheduled hearing date of July 11, 2013, it is hereby ORDERED that the Continuance Motion is GRANTED. The hearing on the Debtor’s Motion (D.I. 166) shall be continued to _____, 2013, to allow the Debtor time to respond in good faith to the discovery served on it by Ansell in regard to the Motion at least seven (7) days prior to the hearing. In the event of a discovery dispute, the hearing date on the Debtor’s Motion may be continued further, to allow for resolution of such dispute.

BY THE COURT:

Dated: _____, 2013

The Honorable Kevin J. Carey,
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

AFFIDAVIT OF JAMIE L. DAWSON, PARALEGAL


STATE OF DELAWARE :
: SS:
NEW CASTLE COUNTY :

I, Jamie L. Dawson, certify that I am, and at all times during the service, have been an employee of Morris James LLP, not less than 18 years of age and not a party to the matter concerning which service was made. I certify further that on July 9, 2013, I caused service of the following:

**EMERGENCY MOTION OF PACIFIC CHLORIDE INC. AND ANSELL
HEALTHCARE PRODUCTS LLC REQUESTING A CONTINUANCE OF THE
HEARING TO CONSIDER THE DEBTOR'S MOTION FOR ENTRY
OF AN ORDER AUTHORIZING (I) REJECTION OF SHREVEPORT
LEASE AND SHREVEPORT CONTRACTS AS OF THE SURRENDER
DATE AND (II) ABANDONMENT OF PERSONAL PROPERTY**


Service was completed upon the parties on the attached list as indicated thereon.

Dated: July 9, 2013



Jamie L. Dawson

SWORN TO AND SUBSCRIBED before me this 9th day of July, 2013.



NOTARY
My commission expires: 11/26/11

VIA HAND DELIVERY

Anthony W. Clark, Esq.
Christine W. Kim, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
P.O. Box 636
Wilmington, DE 19899-0636
[Counsel for the Debtor]

Mark D. Collins, Esq.
Jason M. Madron, Esq.
L. Katherine Good, Esq.
Richards, Layton & Finger, P.A.
One Rodney Square
920 North King Street
Wilmington, DE 19801
[Counsel for JPMorgan Chase Bank, N.A.,
as DIP Financing Agent]

Dennis A. Meloro, Esq.
Greenberg Traurig, LLP
The Nemours Building
1007 North Orange Street
Suite 1200
Wilmington, DE 19801
[Counsel for Wells Fargo Capital Finance,
LLC, as Pre-Petition Secured Lenders]

Joel A. Waite, Esq.
Pauline K. Morgan, Esq.
Andrew L. Magaziner, Esq.
Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, DE 19801
[Counsel for the Unofficial Committee of
Prepetition Senior Secured Noteholders]

Kurt F. Gwynne, Esq.
Richard A. Robinson, Esq.
Reed Smith LLP
1201 N. Market Street, Suite 1500
Wilmington, DE 19801
[Counsel for Wells Fargo Bank, N.A., as
Indenture Trustee for the Senior Secured
Notes]

VIA HAND DELIVERY

Robert J. Dehney, Esq.
Eric D. Schwartz, Esq.
Erin R. Fay, Esq.
Morris Nichols Arshnt & Tunnell LLP
1201 North Market Street, Suite 1600
Wilmington, DE 19801
[Counsel for the Official Committee of
Unsecured Creditors]

Mark S. Kenney
Trial Attorney
Office of the United States Trustee
J. Caleb Boggs Federal Building
844 North King Street, Suite 2207
Lockbox # 35
Wilmington, DE 19801

U.S. Attorney's Office
Nemours Building
1007 Orange Street, Suite 700
Wilmington, DE 19801

VIA FACSIMILE

Exide Technologies
Attn: Phillip A. Damaska
13000 Deerfield Parkway
Building 200
Milton, GA 30004
Facsimile: (678) 566-9188

Kenneth S. Ziman, Esq.
J. Eric Ivester, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036
Facsimile: (212) 735-3000
[Counsel for the Debtor]

James J. Mazza, Jr., Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
155 North Wacker Drive
Chicago, IL 60606
Facsimile: (312) 407-0411
[Counsel for the Debtor]

VIA FACSIMILE

Kenneth A. Rosen, Esq.
Sharon L. Levine, Esq.
Paul Kizel, Esq.
Lowenstein Sandler LLP
65 Livingston Avenue
Roseland, NJ 07068
Facsimile: (973) 597-2400
[Counsel for the Official Committee of
Unsecured Creditors]

Gerald C. Bender, Esq.
Lowenstein Sandler LLP
1251 Avenue of the Americas
New York, NY 10020
Facsimile: (212) 262-7402
[Counsel for the Official Committee of
Unsecured Creditors]

Damian S. Schaible, Esq.
Kenneth J. Steinberg, Esq.
Darren S. Klein, Esq.
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, NY 10017
Facsimile: (212) 701-5800
[Counsel for JPMorgan Chase Bank, N.A.,
as DIP Financing Agent]

David B. Kurzweil, Esq.
Greenberg Traurig, LLP
Terminus 200
3333 Piedmont Road NE, Suite 2500
Atlanta, GA 30305
Facsimile: (678) 553-2212
[Counsel for Wells Fargo Capital Finance,
LLC, as Pre-Petition Secured Lenders]

Nathan A. Haynes, Esq.
Greenberg Traurig, LLP
200 Park Avenue
New York, NY 10166
Facsimile: (212) 801-6400
[Counsel for Wells Fargo Capital Finance,
LLC, as Pre-Petition Secured Lenders]

VIA FACSIMILE

Harold L. Kaplan, Esq.
Mark F. Hebbeln, Esq.
Foley & Lardner LLP
321 North Clarke Street, Suite 2800
Chicago, IL 60654
Facsimile: (312) 832-4700
[Counsel to Wells Fargo Bank, N.A., as
Indenture Trustee for the Senior Secured
Notes]

Rebecca A. Hayes, Esq.
Foley & Lardner LLP
90 Park Avenue
New York, NY 10016
Facsimile: (212) 687-2329
[Counsel to Wells Fargo Bank, N.A., as
Indenture Trustee for the Senior Secured
Notes]

U.S. Bank National Association
Global Trust Services
Attn: Cindy Woodward
60 Livingston Avenue
EP-MN-WS1D
St. Paul, MN 55107
Facsimile: (651) 495-8100
[Indenture Trustee for the Debtor's
Unsecured Bond Issuances]

Alan W. Kornberg, Esq.
Alice Belisle Eaton, Esq.
Evan R. Zisholtz, Esq.
Paul, Weiss, Rifkind, Wharton
& Garrison LLP
1285 Avenue of the Americas
New York, NY 10019
Facsimile: (212) 757-3990
[Counsel for the Unofficial Committee of
Prepetition Senior Secured Noteholders]

VIA FACSIMILE

Claudia Tobler, Esq.
Paul, Weiss, Rifkind, Wharton
& Garrison LLP
2001 K Street, NW
Washington, DC 20006
Facsimile: (202) 204-7420
[Counsel for the Unofficial Committee of
Prepetition Senior Secured Noteholders]

Louisiana Dept. Of Environmental Quality
c/o Amber N. Gremillion, Esq. &
Elliott B. Vega, Esq.
P.O. Box 4302
Baton Rouge, LA 70821
Facsimile: (225) 219-3985

Louisiana Dept. of Environmental Quality
Legal Affairs Division
P.O. Box 4302
Baton Rouge, LA 70821
Facsimile: (225) 219-4068

LADEQ
602 North 5th Street
Baton Rouge, LA 70802
Facsimile: (225) 219-3971

VIA FACSIMILE

Louisiana Dept. Of Environmental Quality
Waste Permits Division
Attn: Todd Thibbodeaux
602 North 5th Street
Baton Rouge, LA 70802
Facsimile: (225) 219-3309

Republic Contractors Inc.
P.O. Box 18836
Shreveport, LA 71138-1836
Facsimile: (318) 687-8066

Allegiance Security Group, LLC
2900 Arendell Street, Suite 18
Morehead City, NJ 28557
Facsimile: (252) 247-1139

VIA FIRST CLASS MAIL

Wells Fargo Bank, N.A.
Attn: Corporate Trust Services- Exide
Technologies
7000 Central Parkway NE, Suite 550
Atlanta, GA 30328
[Indenture Trustee for the Debtor's
Unsecured Bond Issuances]