IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
EXIDE TECHNOLOGIES,	:	Case No. 13-11482 (KJC)
Debtor.[1]	:	**Related Docket Nos.: 4023, 4029, 4245, 4247**
	:	**Hrg. Date: July 1, 2015 at 2:00 p.m. (Eastern)**

THE REORGANIZED DEBTOR'S REPLY IN SUPPORT OF ITS MOTION FOR ENTRY OF AN ORDER (I) ENFORCING THE PLAN INJUNCTION UNDER THE CONFIRMATION ORDER AND CONFIRMED PLAN OF REORGANIZATION AND (II) AWARDING COSTS AND ATTORNEY'S FEES

Exide Technologies, the reorganized debtor in the above-captioned case ("Exide" or the "Reorganized Debtor") hereby submits this reply (this "Reply") to the objection (the "Objection") (Docket No. 4247) of the South Coast Air Quality Management District (the "District"), and in further support of the Reorganized Debtor's motion (the "Motion")[2] under sections 105(a), 524, 1141 and 1142 of title 11 of the United States Code (the "Bankruptcy Code") for entry of an order (the "Order") (i) enforcing the Plan Injunction in the Confirmation Order and the Plan against the District and (ii) imposing sanctions on the District in the form of the reasonable, documented costs and expenses of the Reorganized Debtor in connection with defending the discharged New Claims asserted in the Third Amended Complaint and prosecuting the Motion.

[1] The last four digits of the Reorganized Debtor's taxpayer identification number are 2730. The Reorganized Debtor's corporate headquarters are located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

PRELIMINARY STATEMENT

The District argues that it has an unfettered right to prosecute any prepetition claims in the California State Action – even those that it failed to assert in its only timely-filed proof of claim and without authorization from this Court to file an amended claim or assert untimely, new claims. The District's argument is that one sentence in the Confirmation Order – which simply acknowledges that a ***procedural*** stipulation entered in ***March of 2014*** does not violate the Plan Injunction – somehow exempts the District from a ***substantive*** obligation to comply with the governmental claims Bar Date that came and went in ***December of 2013***.[3] The District's story does not add up.

The District would have this Court believe that the alleged negotiating history over the difference between the words "Litigation," "Complaint" and "Lawsuit" in the March 2014 Stipulation excused it from complying with the Bar Date that already had expired three months earlier.[4] According to the District, because Exide agreed in the March 2014 Stipulation that the District could prosecute the "Lawsuit," as distinguished from the "Original Complaint," the District is now free to bring any prepetition claims it can allege in the California State Action regardless of whether the claims are otherwise timely. And under the March 2015 Confirmation Order, the District also claims that it secured a full exemption from the Plan Injunction for any claim it might raise in the California State Action – again, irrespective of the Bar Date.

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[3] "[A] bar date order does not function merely as a procedural gauntlet, … but as an integral part of the reorganization process. Accordingly, a bar date is likened to a statute of limitations which generally must be strictly observed." In re MK Lombard Group I, Ltd., 301 B.R. 812, 817-818 (Bankr. E.D. Pa. 2003) (internal quotations and citations omitted).

[4] The Bar Date Order (¶ 22) expressly provided that "any Claimant who is required, but fails, to submit a Proof of Claim in accordance with the Bar Date Order on or before the applicable Bar Date shall be forever barred, estopped, and enjoined (subject to a court order finding excusable neglect for such failure) from asserting such Claim against the Debtor, its property, or its estate (or submitting a Proof of Claim with respect thereto), and the Debtor, its property, and its estate shall be forever discharged from any and all indebtedness or liability with respect to such Claim under a confirmed plan of reorganization so providing… ."

The District's semantic argument is without merit. Conspicuously missing from its meandering discussion of the supposed negotiating history for the March 2014 Stipulation is the phrase "bar date" – words that the parties undoubtedly would have used if they were agreeing to waive this fundamental underpinning of chapter 11 ***after it already had passed and/or to revive barred claims***.[5] Moreover, the provision in the Confirmation Order acknowledging that the March 2014 Stipulation does not itself violate the Plan Injunction is an uncontroversial proposition: while the District could proceed with its Lawsuit, it could not add time-barred claims to it without obtaining specific permission from this Court to do so. By the District's logic, the March 2014 Stipulation and this provision in the Confirmation Order would allow it to amend its underlying complaint *ad infinitum*, and any newly asserted prepetition claims – e.g., claims raised tomorrow – would be grandfathered in as timely and not in violation of the discharge and Plan Injunction. This is an absurd reading unsupported by the relevant documents, notwithstanding the District's effort to torture their meaning.

The reality is the District missed the Bar Date for all of its prepetition claims except those contained in its single, timely-filed prepetition proof of claim. The onus is on the District to file and prevail on a motion for excusable neglect if it wants to pursue its time-barred claims or otherwise establish why any amendments to its Original Proof of Claim should relate back under the appropriate legal standard. Neither the Confirmation Order nor the March 2014 Stipulation provides any such relief. Absent that relief, the District is violating the Plan Injunction prohibiting prosecution of discharged prepetition claims – plain and simple.

[5] As this Court repeatedly has held, a bar date is a "drop dead date" that prevents a creditor from asserting prepetition claims unless it can demonstrate excusable neglect. See, e.g., In re New Century TRS Holdings, Inc., 465 B.R. 38, 46 (Bankr. D. Del. 2012); In re New Century TRS Holdings, Inc., 450 B.R. 504, 512 (Bankr. D. Del. 2011); In re New Century TRS Holdings, Inc., 446 B.R. 656, 661 (Bankr. D. Del. 2011).

Clearly, the District's New Claims were made after the Bar Date and do not relate back to timely-filed claims – ***the District does not argue otherwise***. Nor does the District dispute that it was subject to the Bar Date Order. Rather, the District devotes most of its Objection and supporting declaration arguing that the March 2014 Stipulation (an agreement regarding a different disputed issue: whether the automatic stay applied) and the Confirmation Order (which merely preserved the earlier stipulation) somehow (i) excuse the District from complying with this Court's specific Bar Date Order to timely file claims, (ii) negate the Plan's express language disallowing untimely filed claims, and (iii) permit the District to prosecute any claims it desires in the California State Court, whether or not time-barred.

With respect to the New Claims, nothing excused the District from complying with the Bankruptcy Code and Rules or this Court's prior orders requiring claims to be timely filed, just as every other creditor and governmental entity was required to do. Indeed, neither the March 2014 Stipulation in this Court nor the procedural stipulations in the California State Court (the "California Stipulations") overrode the requirement that the District comply with the Bar Date or somehow waived Exide's defenses that the New Claims in the amended complaints were untimely. The March 2014 Stipulation simply settled the dispute between Exide and the District regarding the applicability of the automatic stay to the District's Lawsuit and specified the forum in which the District's timely-filed claims in the Original Complaint would be heard. The Confirmation Order merely preserved that agreement but did not, as the District argues, expand it. As for the California Stipulations, all they did was avoid wasteful procedural disputes in state court regarding filing of amended complaints, while reserving all of Exide's substantive rights, defenses and claims, including that the New Claims in the amended complaints are time-barred.

The District mischaracterizes the Reorganized Debtor's position, arguing that

Exide is attempting to prevent the District from prosecuting the California State Action in the California State Court. That is not Exide's position. Nor is the Reorganized Debtor seeking to prevent the District from pursuing any timely-filed administrative claims. Rather, Exide seeks to enforce the Bar Date Order, the Plan and the Confirmation Order to prevent the District from pursuing time-barred prepetition claims. The District never properly asserted or preserved its New Claims in this Court; as a result, they have been disallowed, expunged and discharged and, absent an order of this Court (entered after proper notice and hearing), the District is barred from pursuing those prepetition claims.

Ignoring this Court's orders, well-settled bar date jurisprudence and the Supreme Court's mandate in Pioneer,[6] the District proposes to litigate any and all claims, whether timely or not, to judgment and thereafter ask this Court to sort out which of them are time-barred. Respectfully, the Court already has decided the issue by disallowing all untimely claims, subject only to a claimant's right to seek to have its claim reinstated for excusable neglect. The reason for this ruling is sound – the parties and this Court (or any other) should not have to waste time and resources to litigate claims that no longer exist. If the District wanted to prosecute its New Claims, it was required to file a motion in this Court, demonstrate why its tardiness is excusable, and afford Exide and other affected constituents the opportunity to rebut the District's position in a proper procedural context.[7] The District failed to do so.

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[6] Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380, 382 (1993) ("Rule 9006(b)(1) empowers a bankruptcy court to permit a late filing if the movant's failure to comply with an earlier deadline 'was the result of excusable neglect.'"); see also Bankruptcy Rule 9006(b)(1) ("when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion . . . (2) ***on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect***.") (Emphasis added).

[7] For example, the District alludes to alleged concealment by Exide as a possible excuse for its failure to timely file claims. Objection ¶¶ 15, 17, 25. Exide vigorously disputes this contention and is confident that, following *(cont'd)*

Similarly, the District asserts, in passing, that there are no restrictions on its prosecution of any "[c]laims for civil penalties assertable (prepetition or postpetition) against the Reorganized Debtor consistent with [the corporate discharge exception] under Bankruptcy Code section 1141(d)(6)." (Objection ¶ 20). To the contrary, the District has no right to prosecute putative claims alleged to be non-dischargeable unless and until this Court so holds in a dischargeability adversary proceeding. Yet, the District has not even brought such a proceeding (which Exide believes is time-barred), saying that it will come back to this Court to determine the discharge exception only after all is said and done in the California State Action. Exide should not be required to devote substantial time, resources and money to adjudicate claims on the merits when, as a threshold matter, the District cannot carry its heavy burden to establish a discharge exemption (to the extent it can still be raised) for those claims under Bankruptcy Code section 1141(d)(6) .

For the reasons set forth herein and in the Motion, the Objection should be overruled, and the Motion should be granted.

ARGUMENT

I. NOTHING EXEMPTS THE DISTRICT FROM THE BAR DATE ORDER.

1. To be clear, and contrary to the District's assertions, Exide neither (i) contends that the District is violating the Confirmation Order by prosecuting any prepetition claims in its Lawsuit in the California State Court other than the New Claims, nor (ii) disputes

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discovery and an evidentiary hearing in the context of a properly-filed excusable neglect motion, the allegation would fail.

the District's ability to pursue any timely-filed administrative expense claims.[8] However, nothing in the March 2014 Stipulation, the Plan, the Bar Date Order or the Confirmation Order exempts the District from following procedures in the Bankruptcy Code, the Bankruptcy Rules or this Court's orders regarding the timely filing of proofs of claim. Nor does the District dispute that it was subject to procedures for filing timely claims in this Court. Accordingly, the District cannot prosecute any late claims – i.e., the New Claims – which already have been disallowed and expunged under the Plan.[9]

2. The District's entire Objection rests on its self-serving misinterpretation of the March 2014 Stipulation, select provisions of the Plan, the Confirmation Order and the procedural California Stipulations. In addition to legal semantics about the words "Complaint," "Litigation" and "Lawsuit," most of the District's argument focuses on the alleged history of negotiations regarding the March 2014 Stipulation and the Confirmation Order. However, the March 2014 Stipulation, the Plan and the Confirmation Order are unambiguous. This Court has noted that contracts (including confirmed plans of reorganization) and court orders should be interpreted based on the plain meaning of the language contained on the face of the documents.[10]

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[8] Exide, however, reserves all of its defenses against the so-called administrative claims requests and notes that its Vernon, California secondary lead recycling facility was not operating for much of the post-petition period, and, ultimately, pursuant to this Court's Order, Exide was permitted to permanently close that facility and take necessary actions to terminate its recycling operations in California. See Order Approving Debtor's Motion For An Order Under Bankruptcy Code Sections 105 And 363 Authorizing The Debtor To Close The Vernon Facility (Docket No. 3418).

[9] The District argues that Exide seeks to limit the District to prosecuting only the Original Complaint which, pursuant to California law, no longer exists because it has been superseded by the Third Amended Complaint. This is another example of the District's legal semantics. Exide does not contend that claims from the Original Complaint (so long as they were asserted in the Original Proof of Claim) that are now also included in the Third Amended Complaint are discharged and, therefore, cannot be prosecuted. Rather, it is only the New Claims included in the Third Amended Complaint that were untimely and have been discharged which, therefore, the District is enjoined from pursuing. The District can prosecute the Third Amended Complaint in the California State Court, but not the New Claims contained therein.

[10] See, e.g., In re Tribune Co., 472 B.R. 223, 246-248 (Bankr. D. Del. 2012) ("The use of extrinsic evidence to interpret clear and unambiguous language in a contract is not permitted …. [I]n order to interpret contracts with *(cont'd)*

As a result, the negotiation history and the District's tortured discussions of the words "Complaint," "Litigation" and "Lawsuit" are not relevant to this Court's determination of the Motion.

3. The March 2014 Stipulation. The March 2014 Stipulation resolved a dispute about whether the automatic stay prevented the District from continuing to prosecute the prepetition claims it had asserted in its Original Complaint. At that time, the District had filed the Original Proof of Claim and the Original Complaint, which largely mirrored the Original Proof of Claim. In order to resolve the dispute over whether the Lawsuit that the District had filed was stayed, the parties agreed to the March 2014 Stipulation allowing the Lawsuit to proceed – nothing more.

4. The March 2014 Stipulation does not state, as the District urges, that it is permitted to prosecute any and all amended claims, whether or not timely. Moreover, that construction is inconsistent with the facts that existed when the March 2014 Stipulation was agreed – i.e., the only "claims" pending in the "Lawsuit" were those set forth in the Original Complaint, which are the only claims included in the District's timely-filed Original Proof of Claim, and the Bar Date had passed nearly three months ***before*** the stipulation was entered. Thus, the Debtor could not, and did not expect, that the District would attempt to assert additional prepetition claims, because its time for doing so had passed. The District is

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some consistency, and in order to provide contracting parties with a legal framework which provides a measure of predictability, the courts must eschew the idea of ascertaining the parties' subjective intent and instead bind parties by the objective manifestations of their intent. The strongest objective manifestation of intent is the language of the contract.") (internal citations omitted) (affirmed in part and vacated in part on other grounds) (applying Delaware law to interpret subordination agreement); see also In re American Home Morg., Inc., 379 B.R. 503, 517 (Bankr. D. Del. 2008) ("If the contract is clear, the Court will not look further for evidence of meaning. The consideration of parol evidence is only permissible if the terms of the agreement are ambiguous.") (finding relevant terms of contract clear and unambiguous and thus ruling that extrinsic evidence relating to prior contractual obligations and relationships was inadmissible) (applying New York law).

intentionally confusing prosecution of claims (a forum/automatic stay issue) with preservation of claims (a bar date/excusable neglect issue).[11]

5. There is no agreement in the March 2014 Stipulation, either expressed or implied, that the District can prosecute any and all claims whether or not time-barred, nor is there any agreement excusing the District from timely filing its claims. Such an agreement would have required an express waiver by Exide of its valuable time-bar defenses and explicit approval by the Court after notice and an opportunity to object and be heard by all other parties in interest in the bankruptcy case – none of which ever happened. Before a party is deemed to have waived or relinquished a legal remedy or right, there must be a clear and distinct manifestation of such an intent.[12] Nowhere does the March 2014 Stipulation express a clear and distinct intent by Exide to intentionally, voluntarily and consciously waive or relinquish its right to assert the Bar Date as a defense to any late filed/untimely claims (e.g., the New Claims), because that was never Exide's intent.

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[11] The District's filing – albeit untimely – of the Amended Proof of Claim in August 2014 shows that it is well aware of the difference between preserving claims and prosecuting them. Indeed, why did the District file the Amended Proof of Claim if it truly believed – as it now argues – that it could prosecute any claims it wanted to assert in the Lawsuit and was exempt from the Bar Date with respect to all such claims? Clearly, the District knew it was not excused from the Bar Date or from following applicable bankruptcy rules for amending claims and filing untimely claims, notwithstanding the March 2014 Stipulation. Because the District cannot carry its burden to demonstrate excusable neglect, it abandoned its untimely efforts to preserve claims and did not file amended proofs of claim with respect to the New Claims set forth in the Second and Third Amended Complaints and, instead, concocted its present arguments with respect to the March 2014 Stipulation.

[12] See, e.g., In re American Home Mortg. Holding, 458 B.R. 161, 174 (Bankr. D. Del. 2011) (applying Illinois law); see also Bantum v. New Castle County Vo-Tech Educ. Ass'n, 21 A.3d 44, 50 (Del. 2011) ("Waiver is the voluntary and intentional relinquishment of a known right. It implies knowledge of all material facts and an intent to waive, together with a willingness to refrain from enforcing those rights. We also have explained that the facts relied upon to prove waiver must be unequivocal." (internal quotations omitted); AeroGlobal Capital Management, LLC v. Cirrus Indus. Inc., 871 A.2d 428 (Del. 2005) (party claiming waiver must show three elements: (1) that there is a requirement or condition to be waived, (2) that the waiving party must know of the requirement or condition, and (3) that the waiving party must intend to waive that requirement or condition.) (noting that standards for finding waiver under Delaware law are "quite exacting.").

6. The Plan and the Confirmation Order. The Plan and the Confirmation Order are equally unambiguous. Article 10.4 of the Plan provides that:

> EXCEPT AS OTHERWISE AGREED, ANY AND ALL PROOFS OF CLAIM FILED AFTER THE APPLICABLE DEADLINE FOR FILING SUCH PROOFS OF CLAIM SHALL BE DEEMED DISALLOWED AND EXPUNGED AS OF THE EFFECTIVE DATE … UNLESS SUCH LATE PROOF OF CLAIM IS DEEMED TIMELY FILED BY A FINAL ORDER OF THE BANKRUPTCY COURT.

Plan Art. 10.4 (emphasis in original). The Plan and the Confirmation Order also discharge all disallowed claims and enjoin their further prosecution. Plan Art. 12.2, 12.11; Confirmation Order ¶¶ 44, 55. While paragraph 31 of the Confirmation Order says that the injunction in the Plan and the Confirmation Order do not prevent the District from proceeding in the California State Court in accordance with the March 2014 Stipulation, that simply made clear that the provisions of the stipulation (including that the District can prosecute the Lawsuit in the California State Court) are still viable notwithstanding the Plan Injunction. The only sensible reading of the reservation of rights, included in paragraph 31 of the Confirmation Order at the District's request, is that it preserved the right to proceed with the Lawsuit in the California State Court (which Exide does not deny). Nothing more. Nowhere does it purport to revive claims already disallowed by this Court, prevent the Court from disallowing such claims, or excuse the District from complying with bankruptcy law and this Court's orders governing the filing of timely claims.

7. To the contrary, paragraph 31 of the Confirmation Order is silent about what claims in the California State Court Action are still viable. Had the parties meant to invoke the lead-in language to Article 10.4 of the Plan ("Except as otherwise agreed,") and avoid the disallowance and expungement of untimely claims mandated by the remainder of Article 10.4 of

the Plan, they would have clearly said so.[13] Paragraph 31 of the Confirmation Order does not provide that Exide has waived its right to raise affirmative defenses such as the untimeliness, disallowance and dischargeability of the New Claims; nor does it negate (or even address) the other unambiguous provisions of the Plan and the Confirmation Order that disallow untimely filed claims and enjoin their prosecution. Had that been the intent of the parties (or the Court), paragraph 31 of the Confirmation Order specifically would have provided that the Plan and the Confirmation Order provisions disallowing untimely filed claims do not apply to the District's claims. Clearly, there is no such reference.

8. Even if the morass of extrinsic "evidence" that the District attempts to introduce was relevant, all it shows is an agreement between the parties, which Exide does not dispute.[14] And that agreement, as reflected both in the March 2014 Stipulation and the subsequent reservation of rights in the Confirmation Order, concerned only whether the California State Court Action could proceed, not what could be prosecuted in that litigation.

9. The California Stipulations. The California Stipulations permitting the filing of amended complaints in the California State Court have no bearing on whether the District's New Claims have been disallowed and expunged or were timely filed. Indeed, the

[13] When other parties (e.g., UGI Utilities, Inc., Mitsubishi Electric Power Products, Inc., and Charles A. Lieupo) properly filed motions seeking to file late claims (see, e.g., Docket Nos. 1061, 1305 and 2709), the Debtor reached express agreements with those creditors permitting them to file their late claims. Neither the March 2014 Stipulation nor paragraph 31 of the Confirmation Order contains any such explicit agreement, let alone any agreement at all, regarding the District's ability to file late claims, because it was never the parties' intention to do so.

[14] Indeed, the very extrinsic evidence that the District seeks to introduce actually supports the Reorganized Debtor's position that the purpose for entering the 2014 March Stipulation was nothing more than to avoid the expense of litigating the applicability of the automatic stay. As Exide's correspondence attached to the Pfister Declaration (defined below) as Exhibit 1 states: "Thus, the Complaint and the Litigation violate the automatic stay. To avoid unnecessary expense in connection with this violation, Exide will consider entering into a stipulation permitting the Litigation to proceed provided that [the District] agrees that it will not seek to collect any awards that may be assessed in the Litigation absent further order of the bankruptcy court."

Court need only review the clear and unambiguous terms of the Bar Date Order, the March 2014 Stipulation, the Plan and the Confirmation Order to make that determination.

10. Rather, the California Stipulations served a different purpose. Under the California rules of civil procedure, after an answer has been filed (as occurred here), a plaintiff may amend a complaint only with leave of the court granted after a motion or agreement of the parties. See Cal. Civ. Proc. Code §§ 472, 473(a)(1). The California Stipulations avoided unnecessary and costly procedural fights about whether the District could file a piece of paper (i.e., an amended complaint), not whether what was contained in the filing was viable.

11. Exide was not required to litigate the timeliness issue in the California State Court; indeed, the District and Exide previously agreed, in the March 2014 Stipulation, that this Court would decide such issues, as the District concedes. (Objection ¶ 6) ("[T]he District has always acknowledged that it must return to this Court … and that this Court will then resolve questions of allowability, priority, timeliness, dischargeability, and the like."). And Exide expressly preserved all of its rights, claims and defenses in each of the California Stipulations to, among other things, oppose the new claims on any grounds.[15]

12. In the Declaration of Robert J. Pfister in Opposition to The Reorganized Debtor's Motion for Entry of an Order (I) Enforcing the Plan Injunction Under the Confirmation Order and Confirmed Plan of Reorganization and (II) Awarding Costs and Attorney's Fees (the "Pfister Declaration"), the District points out that in the most recent California Stipulation, Exide

[15] For example, the California Stipulation for the Second Amended Complaint stated: "[T]he Parties agree that allowing [the District] to file the Second Amended Complaint would not constitute an admission by Exide of any allegation contained in the Second Amended Complaint and that Exide reserves the right to challenge the Second Amended Complaint." More importantly, the order signed by the California State Court stated that "Exide's agreement to not oppose Plaintiff's Motion for Leave does not constitute a waiver of any objections, defenses, or challenges to the First Amended Complaint, all of which are expressly reserved." (Ex. 12 at p. 3/ln. 8-10 (emphasis added)).

for the first time asserted specifically (as opposed to general reservations) that the New Claims are untimely, have been disallowed and their prosecution by the District violates the Plan Injunction. That is because that stipulation was the only one entered after the Confirmation Order (and the Plan Effective Date) pursuant to which all late claims were disallowed, expunged and discharged, and creditors (such as the District) were enjoined from pursuing them. Indeed, in the negotiations over this stipulation, Exide explicitly warned the District that its conduct violated the Plan Injunction. But rather than moving in this Court to file late claims and show excusable neglect, the District willfully and knowingly chose to proceed with its time-barred and discharged New Claims in the California State Court in violation of the Plan Injunction.

13. Accordingly, the New Claims have been discharged, and the District should be enjoined from prosecuting them absent further order of this Court.

II. THE DISTRICT MUST FILE A MOTION AND SHOW EXCUSABLE NEGLECT IN ORDER TO PROSECUTE ITS NEW CLAIMS.

A. The District Must Show Excusable Neglect.

14. Under Bankruptcy Rule 9006(b)(1), "when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion … (2) ***on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect***." (Emphasis added). Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship, 507 U.S. 380 (1993), is the seminal case dealing with "excusable neglect" in the context of a late-filed proof of claim. The factors addressed in Pioneer were: "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." Id. at 395.

15. By refusing to move for leave to file late claims, the District tries to avoid the heavy burden of proving excusable neglect for its late claims. Most of the Objection attempts to explain why the New Claims were not disallowed, but then asserts that the issue is premature. Rather, the District argues that the California State Court should be permitted to "finish its work" before this Court addresses whether the claims were discharged or otherwise time-barred. Objection ¶ 6. The District would have the parties and the California State Court waste months or years and substantial resources litigating claims for which it cannot recover because they are disallowed (as Exide contends) or disallowable (as the District begrudgingly concedes is possible). That makes no sense.

16. Under similar circumstances, the Court in Tribune rejected this approach and ruled that the claims were untimely and the claimant did not show excusable neglect, despite the fact that the underlying litigation was still ongoing in federal district court. See In re Tribune Co., 2013 Bankr. LEXIS 4751 (Bankr. D. Del. Nov. 8, 2013). The Court did not wait to rule on the Tribune's objection to the untimely claims until the district court had reached judgment on the underlying merits of the claims. And after this Court disallowed the claims, the district court agreed that the untimely claims were barred, there were no other viable claims, and dismissed the case with prejudice. There was no reason to adjudicate futile, time-barred claims. So too here.

17. The cases cited by the District to argue that this Court should wait to determine whether the New Claims are barred, enjoined or otherwise time-barred are inapposite. See Objection ¶ 7. None of them dealt with the situation here, where the claims already have been disallowed and expunged by a previous court order (i.e., there is nothing to adjudicate in the California State Action with respect to the New Claims), and the Reorganized Debtor is simply seeking to enforce previous court orders. Moreover, unlike the cases cited in the

Objection where resolution of the bankruptcy court objection was dependent in part on the determination of the underlying state or federal court litigation,[16] here, even if this Court were being asked for the first time to determine the allowability, timeliness and dischargeability of the District's New Claims, those determinations are completely independent from the issues in the state court litigation and can be made without the benefit of the state court ruling on the merits of the underlying claims. Indeed, as noted above, it would be absurd and wholly wasteful of party and judicial resources for the California State Court to adjudicate claims disallowed by this Court.

18. The District's half-hearted attempt to show excusable neglect (see Objection ¶¶ 15, 16 and Pfister Declaration ¶¶ 22 -26) does not even begin to satisfy its burden of proof on the issue. See Jones v. Chemetron Corp., 212 F.3d 199, 205 (3d Cir. 2000). The District cannot prevail on any of the Pioneer factors.[17] The District's apparent excuse for not

[16] For example, in In re Walnut Equip. Leasing Co., Inc., 20002 Bankr. LEXIS 1401, * 13-15 (Bankr. E.D. Pa. Nov. 1, 2000), the bankruptcy court exercised its discretion to continue a hearing on the liquidation trustee's asserted setoff right until the trustee's underlying claims against directors and officers were adjudicated in the district court, because resolution of the sole remaining issue (setoff) might be facilitated by a settlement of the district court action. In that case, the bankruptcy court could not make the underlying determination of whether the claims should be setoff against each other until it knew the validity of the underlying claims. By contrast, here, the issues of allowability, timeliness, and dischargeability are entirely independent from the underlying issues in the California State Court pertaining to the liquidation of certain claims. The merits of the untimely claims do not need to be decided (nor should they be decided) if the District is enjoined from pursuing such late claims and barred from recovering on them. Similarly, in In re Watson, 187 B.R. 583, 587 (Bankr. N.D. Ohio 1995), the bankruptcy court continued a chapter 7 trustee's objection to a debtor's claimed exemption, because whether the debtor was entitled to the exemption was dependent on a determination in the underlying personal injury action. Even in that case, however, the bankruptcy court noted that "situations could exist where the personal injury … would entitle the debtor to an exemption before the injury case is finally liquidated. In that case, if a party feels that evidence could be adequately presented before liquidation … the debtor could request a hearing on the objection at that time." Here, of course, the tardiness of the District's claims has nothing to do with (and is not dependent on) the underlying state court litigation. Indeed, as noted above, adjudicating such disallowed claims to judgment only to find they had been disallowed would be contrary to judicial economy and waste valuable estate and court resources.

[17] As the GUC Trust Trustee (as defined in the Plan) pointed out in its joinder in Exide's Motion (Docket No. 4245) (the "Joinder"), permitting untimely claims (especially under the District's interpretation, which arguably would permit the District to continue to amend the state court complaint to assert increasing amounts and additional causes of action whenever it saw fit) would upset the basis on which the Plan was negotiated and prejudice the Debtor's estate and its creditors. "[A] clear mutual understanding of the projected aggregate claims in this case was essential to the extensive negotiations between the Debtor and the Official Committee of *(cont'd)*

filing certain of the New Claims (primarily those first advanced post-Effective Date in the Third Amended Complaint) is that something was "concealed" from it. However, nothing was concealed from the District, and it has no excuse for its refusal to file proofs of claim (which continues to this day) with respect to the other New Claims (those first advanced in the Second Amended Complaint).[18]

19. In order to decide the instant Motion, this Court need not determine any of these issues, because the District has never filed an excusable neglect motion with respect to the New Claims. Respectfully, this Court should simply enforce the Plan Injunction and prohibit the continued prosecution of the New Claims. At a minimum, the District should be required to move for leave to late-file its New Claims and establish excusable neglect. That would provide Exide and other parties in interest with the procedural protections to which they are entitled and put the District to its proofs on its excusable neglect burden. For example, Exide and other constituents who will be affected by the District's New Claims are entitled to know the District's positions on each of the Pioneer factors, conduct discovery with respect thereto, and contest the District's factual allegations in an evidentiary hearing.

B. The District Must Show That Any Amendments Relate Back To The Timely Filed Claim And Offer A Compelling Reason For Filing Any Amendments Post-Effective Date.

20. The District notes that the Plan contemplates "amendments to timely filed proofs of Claim ***to the extent permitted by applicable law***." Plan, Art. 10.4 (emphasis added).

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Unsecured Creditors, which ultimately gave rise to the GUC Trust Settlement Agreement … and made confirmation of a consensual Plan even possible." Joinder ¶ 5.

[18] Certain of the New Claims contained in the First Amended Complaint were the subject of a purported proof of claim – the Amended Proof of Claim. However, the Amended Proof of Claim was filed more than eight months after the Bar Date. Therefore, it is untimely, and the District has not sought this Court's permission to file it and show that it relates back to the timely-filed Original Proof of Claim or establish excusable neglect.

See Objection fn. 8. The District then cites case law for the proposition that amendments to proofs of claim should be liberally allowed. However, those cases do not apply to "new" claims. As this Court has held, "[o]nce the deadline to file claims has passed, 'an amendment to a claim filed post bar date must be scrutinized to assure that it is not an attempt to file a new claim.'" In re Tribune Co., No. 08-13141 (KJC), 2013 WL 5966885, at *8 (Bankr. D. Del. Nov. 8, 2013).

21. The only subsequent claims that may be permitted as amendments are those that "relate back" to timely-filed claims. In re G-I Holdings, Inc., 514 B.R. 720, 755 (Bankr. D. N.J. 2014) (amendments must relate back to conduct, transactions or occurrences set forth in original pleading or they will be deemed new claims and will not be permitted). The District does not allege that its New Claims relate back to the five narrow notices of violation that were the subject of its Original Proof of Claim, nor otherwise dispute the materials provided by Exide in support of the Motion showing that the New Claims do not relate back.

22. The District does refer to Article 10.7 of the Plan to suggest that only post-Effective Date amendments require leave of this Court prior to amending the claim. That, however, is incorrect because, under applicable bankruptcy law, a party seeking to amend its proof of claim after the bar date must obtain the court's permission. In re Brown, 159 B.R. 710, 714 (Bankr. D.N.J. 1993).

23. Moreover, even if pre-Effective Date amendments did not require this Court's permission (they do), that would only apply to the District's Amended Proof of Claim. Any further amendments that the District might seek to file now or in the future (on account of claims in the Second and Third Amended Complaints) would be post-Effective Date, which, under the District's own Plan analysis, require leave of this Court prior to amending. This Plan provision derives from applicable law holding that amendments of claims after plan confirmation

require a cogent or compelling reason. See, e.g., Holstein v. Brill, 987 F.2d 1268, 1271 (7th Cir. 1993) ("We asked the parties whether any other court ever had allowed a claim to be increased, for any reason, after confirmation of a plan of reorganization. Neither side could find such a decision under the 1978 Code, or for that matter under the 1898 Act during its final 50 years. Our search was equally fruitless."). The Holstein court stated that once a plan has been confirmed, "further changes should be allowed only for compelling reasons," because post-confirmation amendments "make an end run around these provisions and may throw monkey wrenches into the proceedings … they assuredly disrupt the orderly process of adjudication. To every thing there is a season, and the season for stating the amount of a debt is before the confirmation of a plan of reorganization." Id. at 1270-71.[19]

24. Here, the District has never even tried to file proofs of claim for the New Claims set forth in its Second and Third Amended Complaints or sought permission to prosecute them as late claims or amendments to the Original Proof of Claim.[20] The District offers no reason, much less a compelling one, for having waited so long to "assert" its New Claims, including many that are materially different from, and vastly expand on, the Original Proof of Claim (the District's only timely filed proof of claim), which was limited to five discrete NOVs in a liquidated amount. See G-I Holdings, 514 B.R. at 760-61 (housing authority offered no

[19] Further, in In re Nextmedia Group Inc., 2011 WL 4711997, at *3 (D. Del. Oct. 6, 2011), the court found that "[w]hile it is not impossible to amend a claim after a plan of reorganization has been confirmed and rendered effective, a party must generally show good cause to do so." Similarly, the Eleventh Circuit found that "post-confirmation amendment – while not prohibited – is not favored, and only the most compelling circumstances justify it. In the absence of such compelling reasons, a confirmed plan should be accorded res judicata effect on a creditor's subsequent attempt to amend his claim." In re Winn-Dixie Stores, Inc., 639 F.3d 1053, 1056-57 (11th Cir. 2011).

[20] The last proof of claim on account of prepetition claims was filed by the District in August 2014, more than eight months after the applicable Bar Date, and that amended proof of claim only set forth the claims asserted in the First Amended Complaint.

reason for waiting three years after confirmation to purport to amend its proof of claim and, therefore, was bound by plan under principles of res judicata).

25. Accordingly, the District has no right to prosecute the time-barred New Claims, and it should be enjoined from doing so.

III. THE DISTRICT SHOULD NOT BE ALLOWED TO PURSUE ITS ALLEGEDLY NON-DISCHARGEABLE CLAIMS BEFORE PROVING TO THIS COURT THAT SUCH CLAIMS ARE NON-DISCHARGEABLE.

26. The District contends[21] that certain of the New Claims included in the Third Amended Complaint – a pleading filed after the Effective Date – that it is prosecuting in the California State Court Action are (or at least, may be) non-dischargeable. Objection ¶¶ 20, 21. While the Confirmation Order preserved the applicability, if any, of the corporate discharge exception under Bankruptcy Code § 1141(d)(6), it did nothing more. It certainly did not prevent Exide from asserting any defenses, including that any allegedly non-dischargeable claims are untimely or that the District is time-barred from filing an adversary complaint seeking a determination of non-dischargeability.

27. Rather, the Confirmation Order left open such questions. And, as the District admits, it must return to this Court to resolve them. Objection ¶ 6 ("[T]he District has

[21] The District's mere averments of fraud are conclusory allegations that fail to state a claim under Rule 12(b)(6). Moreover, complaints for non-dischargeability on the basis of fraud of the kind under Bankruptcy Code section 523(a)(2)(A) are governed by the heightened pleading requirements of Bankruptcy Rule 7009 and Rule 9(b). See In re Kanaley, 241 B.R. 795, 803 (Bankr. S.D.N.Y. 1999). And, ultimately, to sustain a prima facie case of fraud, a plaintiff under section 523(a)(2) must establish, among other things, that: (1) the debtor made a material representation; (2) the representation was false; (3) the debtor knew the representation was false; (4) the debtor's intention and purpose in making the representation was to deceive the creditor; (5) the creditor justifiably relied on the representation; and (6) the creditor sustained a loss or damage as the proximate consequence of the representation having been made. See, e.g., In re Franklin, 179 B.R. 913, 918 fn. 3 (Bankr. E.D. Cal. 1995).

always acknowledged that it must return to this Court … and that this Court will then resolve question so of allowability, priority, timeliness, dischargeability, and the like.").[22]

28. Common sense and judicial economy dictate that this threshold question – whether the New Claims already have been discharged – should be answered before litigating the underlying merits of these allegedly non-dischargeable New Claims. Otherwise, Exide, the District and the California State Court may waste substantial time and resources adjudicating claims that are ultimately discharged and thus not viable.[23]

IV. SANCTIONS SHOULD BE IMPOSED ON THE DISTRICT FOR ITS VIOLATION OF THE CONFIRMATION ORDER.

29. The District willfully and knowingly filed the New Claims set forth in the Third Amended Complaint in the face of Exide's explicit warning that such action would violate the Plan Injunction. Therefore, Exide seeks its costs and attorney's fees in defending the discharged claims asserted in the Third Amended Complaint and prosecuting this Motion. Courts have imposed such sanctions for willful and knowing violations of the permanent injunction and discharge. In re Kiker, 98 B.R. 103, 108 (Bankr. N.D. Ga. 1988) ("The discharge and the injunction of discharge are the key elements of a debtor's fresh start. Violations of the injunction of discharge are considered serious matters and must be redressed. … There is nothing more essential to a bankruptcy case than the preservation of the integrity of a debtor's

[22] Statutory exceptions to discharge are narrowly construed against an objecting creditor and in favor of the debtor. See, e.g., In re Furio, 77 F.3d. 622, 624 (2d Cir. 1996); Werner v. Hofmann, 5 F.3d 1170, 1172 (8th Cir. 1993). To fit within the corporate discharge exception, the debt must be one "for money, property, services, or an extension, renewal, or refinancing of credit" that was obtained by "false pretenses, a false representation, or actual fraud." Bankruptcy Code § 523(a)(2)(A). Given the regulatory (not financial) nature of its relationship with Exide, the District cannot establish such an exception.

[23] Of course, if the District's alleged non-dischargeable claims are determined to be dischargeable, then not only have they been discharged, but such prepetition claims are clearly untimely and, thus, have also already been disallowed under the Plan. See Plan, Art. 10.4.

discharge.") (internal quotations omitted) (finding that the United States, acting through the Internal Revenue Service, willfully and knowingly violated permanent injunction, was in civil contempt of discharge order, and awarding debtors' attorney's fees and related costs to compensate for defense of their rights granted by the discharge); Matter of Miller, 81 B.R. 672 (Bankr. M.D. Fla 1988) ("It is well established that, ordinarily, one who willfully violates an injunction issued by a court of competent jurisdiction is held in contempt and punished accordingly."); see also In re DBSI, Inc., 2012 WL 3150427, *3 (Bankr. D. Del. Aug. 2, 2012) (stating that court would entertain motion for sanctions if claimant who filed state court action in violation of plan injunction, and was thus in contempt of confirmation order, did not immediately withdraw state court action with prejudice.).

30. Under the circumstances here, an award of costs and attorney's fees to Exide is necessary to compensate it for the expenses of defending its rights under the Plan Injunction and discharge provisions and, respectfully, should be granted.

CONCLUSION

WHEREFORE, the Reorganized Debtor respectfully requests that the Court (i) overrule the Objection, (ii) grant the relief requested in the Motion, and (iii) grant such other relief as may be just and proper.

Dated: Wilmington, Delaware
June 26, 2015

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