

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

In re:

EXIDE TECHNOLOGIES,

Reorganized Debtor.¹

Chapter 11

Case No. 13-11482 (KJC)

**Hrg./Status Conf. Date: February 2, 2016 at
10:00 a.m. Eastern Standard Time**

**Related Docket Nos.: 4247, 4414, 4503, 4528,
4558, 4562**

**REPLY IN FURTHER SUPPORT OF THE DISTRICT'S MOTION
FOR ENTRY OF AN ORDER CONCERNING THE TIMELINESS
OF ITS GENERAL UNSECURED CLAIMS AGAINST EXIDE**

Pursuant to and in accordance with that certain *Order Granting Parties' Agreed Schedule* [Docket No. 4528], the South Coast Air Quality Management District (the "District") hereby replies (this "Reply") to the response [Docket No. 4562] (the "Objection") of Exide Technologies ("Exide" or the "Reorganized Debtor"), in further support of [*The District's Motion for Entry of an Order Concerning the Timeliness of Its General Unsecured Claims Against Exide* [Docket No. 4503] (the "GUC Claims Motion" or "Motion"),² which seeks a determination by this Court that all prepetition claims asserted against Exide in the District's Third Amended Complaint in the California State Court may be pursued by the District.

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 GUC Claims Motion.

Exide's Objection defines the GUC Claims Motion as the "Relation Back Motion," but for clarity and consistency the District uses the defined term from the *Order Resolving the Reorganized Debtor's Motion [to Enforce]* [Docket No. 4414] at ¶ 2.

INTRODUCTION

1. Justice Stevens once remarked that “[s]ome appellate judges are better historians than others.”³ The same might be said of litigants. Exide opens its Objection with a broadside about the District supposedly believing that “the rules for everyone else in the bankruptcy process just do not apply to the District,” Obj. ¶ 1, and complains that the District is impeding Exide’s fresh start by pursuing “limitless claims about a shuttered Los Angeles facility,” *id.* ¶ 2.

2. The actual facts are far different. The District timely filed its Original Proof of Claim (Pfister Decl. Ex. 7) in December 2013, and then timely and properly amended that proof of claim in August 2014 (Pfister Decl. Ex. 14).⁴ This occurred against the backdrop of active, unstayed police and regulatory litigation in the California State Court, *see* 11 U.S.C. § 364(b)(4), which this Court permitted to proceed both before confirmation, *see* March 2014 Stip. (Pfister Decl. Ex. 6) ¶ 1, and after confirmation, *see* Conf. Order ¶ 31. Moreover, the only claims at issue in the District’s GUC Claims Motion are prepetition general unsecured claims that will be satisfied, if at all, from the Exide Creditors’ Liquidating Trust (the “GUC Trust”), without implicating Exide’s “fresh start.” *See infra* ¶¶ 7–8.

3. These facts matter. Exide’s Objection rests on an argument that is the precise opposite of the position Exide took from January 2014 (when the District’s Original Complaint was filed) through the briefing and argument on the Motion to Enforce. Specifically, Exide now says that the Original Complaint (filed January 2014), the First Amended Complaint (filed August 2014), and the Amended Proof of Claim (also filed August 2014) are nullities and have

³ *See E. Enters. v. Apfel*, 524 U.S. 498, 550, 118 S. Ct. 2131, 2160 (1998) (Stevens, J., dissenting).

⁴ *See* Plan § 10.7 (setting the deadline to amend claims as the Effective Date, which was April 30, 2015).

no relevance to the timeliness of the District's claims. That is exactly the opposite of what Exide said in January 2014, when Exide correctly observed that the Original Complaint "involves alleged penalties *virtually mirroring* those in the [Original Proof of Claim]." Jan. 21, 2014 Ltr. (Pfister Decl. Ex. 1) at 1 (emphasis added). Exide's current position is also the opposite of what Exide said in connection with its Motion to Enforce, which rested on a detailed comparison of the Original Complaint and the First Amended Complaint (which is incorporated by reference into the Amended Proof of Claim) to the Third Amended Complaint. Exide's prior position (maintained from January 2014 through October 2015) is the correct analysis, as confirmed by the positions Exide has consistently taken with regard to other claim objections.

4. If Exide believed that the only "claims" that the District could permissibly pursue were five notices of violation attached to the Original Proof of Claim, and that none of the specific allegations in the Original Complaint or any amended complaints that were filed before plan confirmation that alleged anything beyond five notices of violation could be pursued because they did not relate back to the Original Proof of Claim and were accordingly time-barred, then Exide would never have agreed to the March 2014 Stipulation in this Court that permitted the California State Action to proceed, would never have stipulated in the California State Court to the subsequent amendments to the Original Complaint, and would have asked this Court to intervene as necessary. But, in fact, Exide took no such action, instead freely agreeing to allow the California State Action to proceed for 18 months, until suddenly and inexplicably changing course by bringing the Motion to Enforce following plan confirmation. *See infra* ¶¶ 9–19.

5. The sole question before the Court on the District's GUC Claims Motion is whether the "prepetition claims asserted in the Third Amended Complaint in the District's

California State Action may be pursued by the District.” *See Order Resolving the Reorganized Debtor’s Motion [to Enforce]* [Docket No. 4414] at ¶ 2. The Motion involves no claim of excusable neglect because there was no neglect. The Court need only apply Federal Rule of Civil Procedure 15(c)(1)(B), which provides that an amendment to a later-filed pleading is timely so long as it “asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading.” This is a pure question of law, the answer to which is clear – every allegation of prepetition conduct in the Third Amended Complaint satisfies Rule 15’s standard when measured against the Original Proof of Claim, the Original Complaint, and the Amended Proof of Claim. Each such filing rests on the same core misconduct – emissions of lead and arsenic by Exide at its Vernon facility in violation of the District’s rules and regulations. *See infra* ¶¶ 20–27.

6. In short, there is no “pattern of disregard of the bankruptcy process” by the District, Obj. ¶ 3, only the liquidation in another forum of a timely filed (and thereafter timely amended) prepetition general unsecured claim that will be satisfied, if at all, from the GUC Trust. The GUC Claims Motion seeks nothing more than application of the well-settled Rule 15(c)(1)(B) relation back standard. The District’s Motion sets out that standard and its correct application here. Nothing in Exide’s Objection affects that analysis. The GUC Claims Motion is well-taken and should be granted.

ARGUMENT

A. Exide Mischaracterizes the Course of Conduct Between Itself and the District

7. The Objection tries to recast a straightforward legal dispute as a morality tale, accusing the District of acting as though “the rules for everyone else in the bankruptcy process just do not apply to the District.” Obj. ¶ 1. Without rehashing the full factual showing made in

opposition to the Motion to Enforce,⁵ the actual sequence of events contradicts the picture Exide tries to paint of a scofflaw governmental unit believing itself unbound by the rules that apply to everyone else:

- ***Compliance with the Bar Date:*** The District timely and properly filed its Original Proof of Claim (Pfister Decl. Ex. 7) on the applicable bar date, in the face amount of \$38,915,000.
- ***Commencement of a Police and Regulatory Power Lawsuit:*** The District commenced the California State Action in strict accordance with the “police and regulatory power” exception to the automatic stay (11 U.S.C. § 364(b)(4)), thereby opening the forum in which the District’s prepetition general unsecured claim (as well as other claims not at issue in the GUC Claims Motion, such as the District’s administrative claim) would be liquidated.
- ***Court-Approved Stipulation:*** When Exide complained that the District’s California State Action “involves alleged penalties virtually mirroring those in the proof of claim,” Jan. 21, 2014 Ltr. (Pfister Decl. Ex. 1) at 1, and thus accused the District of violating the automatic stay by attempting to liquidate its Original Proof of Claim in the California State Court, the District promptly agreed to a stipulation prepared by Exide and approved by this Court confirming that “the District shall be permitted to prosecute the Lawsuit through and including entry of judgment,” with the District’s agreement to return to this Court before seeking to

⁵ The Pfister Declaration, which was tendered and admitted into evidence in opposition to the Motion to Enforce, *see* July 7, 2015 Tr. at 37–38, carefully sets out the full history of the District’s participation in this case and demonstrates the inaccuracy of Exide’s *ad hominem* attacks.

collect “any money judgment entered in the Lawsuit.” March 2014 Stip. (Pfister Decl. Ex. 6) ¶ 1.

- ***Timely Filing of an Amended Complaint:*** With Exide’s express consent, *see* FAC Stip. (Pfister Decl. Ex. 12), the District timely and properly filed its First Amended Complaint (Pfister Decl. Ex. 13). Prior to reaching the FAC Stipulation, the District filed the FAC Motion (Pfister Decl. Ex. 11), which demonstrated why the proposed amendment complied with the California State Court’s procedural rules regarding the amendment of pleadings (which essentially mirror Rule 15).
- ***Timely Amendment of the Original Proof of Claim:*** Two weeks after the First Amended Complaint was filed in California State Court, the District filed its Amended Proof of Claim (Pfister Decl. Ex. 14). The Amended Proof of Claim attached a copy of the First Amended Complaint, recited Exide’s consent to the amendment in California State Court, and explained that it was listing the claim as unliquidated because the California State Action was in litigation (unlike when the Original Proof of Claim was filed). The District’s Amended Proof of Claim is timely. *See* Plan § 10.7 (setting the Effective Date, *i.e.*, April 30, 2015, as the deadline after which proofs of claim may not be amended).
- ***Timely Confirmation Objection:*** The District timely filed its Confirmation Objection (Pfister Decl. Ex. 23), which asserted that any confirmation order must expressly provide for the continuation of the California State Action, as the California State Court is the forum in which the District’s proof of claim was being liquidated.
- ***Good Faith Negotiation of Confirmation Order Language:*** The District worked

with Exide's bankruptcy counsel to resolve the District's Confirmation Objection by including an express provision in the Confirmation Order (¶ 31) permitting continued litigation of the California State Action.

8. These are not the actions of a party that "disregards" the bankruptcy process, Obj. ¶ 3, or disrespects the power and authority of this Court. Exide's revisionist arguments to the contrary began only after the Plan went effective, when Exide filed its Motion to Enforce. But even the Motion to Enforce recognized that what had transpired during the prior eighteen months of litigation between Exide and the District in the California State Court was relevant to Exide's sudden claim that the District was violating the Confirmation Order by prosecuting a lawsuit (the California State Action) that the Confirmation Order expressly allows to proceed. Now, in its Objection, Exide abandons even that nod to the significance of what has come before.

B. Exide's Tactical Pivot is Irreconcilable with Exide's Previous Actions and Arguments, Including with Respect to Creditors Other Than the District

9. The Objection asserts that only the District's Original Proof of Claim, which was filed on the applicable bar date in December 2013, is relevant to the GUC Claims Motion. *See, e.g.*, Obj. ¶¶ 3–5, 33. The District's Original Complaint (filed a month later, in January 2014) is asserted to be completely irrelevant, as is the District's First Amended Complaint, which was filed in August 2014 and was attached to and incorporated by reference in the District's Amended Proof of Claim (also filed in August 2014).

10. The arguments made in the Objection are directly contrary to Exide's past positions, both as to the District and as to other creditors.

11. *First*, with regard to the relevance of the Original Complaint, Exide's position in January 2014 was crystal clear. As detailed in the District's opposition to the Motion to Enforce, Exide immediately recognized that the Original Complaint "involves alleged penalties *virtually*

mirroring those in the proof of claim [*i.e.*, the Original Proof of Claim] filed in the bankruptcy case by [the District].” Jan. 21, 2014 Ltr. (Pfister Decl. Ex. 1) at 1 (emphasis added). It was on that basis that Exide contended that the filing of the Original Complaint was in violation of the automatic stay, notwithstanding the clear applicability of the police and regulatory exception (11 U.S.C. § 362(b)(4)). Less than a week after the Original Complaint was filed, Exide’s counsel wrote to the District:

The Complaint involves alleged penalties *virtually mirroring* those in the proof of claim filed in the Bankruptcy Case by SCAQMD and is clearly an attempt to collect from Exide. *Thus*, the Complaint and the Litigation violate the automatic stay....

Jan. 21, 2014 Ltr. (Pfister Decl. Ex. 1) at 1 (emphasis added).

12. In response to this contention, Exide and the District entered into, and this Court approved, the March 2014 Stipulation (Pfister Decl. Ex. 6). The March 2014 Stipulation permitted the District to prosecute the Lawsuit – including, but not limited to, the Original Complaint – through final judgment, on the condition that the District acknowledge that it would have to return to this Court before collecting a money judgment. The District has always abided by the March 2014 Stipulation, and successfully insisted (via its Confirmation Objection) that the terms of the March 2014 Stipulation continue post-confirmation. If Exide did not believe the position it took in its January 21, 2014 Letter (which asserted that the penalties sought in the Original Complaint “virtually mirror” the penalties sought in the Original Proof of Claim), Exide would not have litigated the California State Action for 18 months, through multiple rounds of stipulated pleading amendments.

13. *Second*, with regard to the relevance of the First Amended Complaint, there is no question that the First Amended Complaint (filed August 2014) was attached to and incorporated by reference in the Amended Proof of Claim (also filed August 2014). The Objection contains

almost no mention of the Amended Proof of Claim, and seems to take the position that proofs of claim are unamendable. But the Plan permits pre-Effective Date amendments to timely filed proofs of claim. *See* Plan §§ 10.4 (“Nothing in this Plan shall preclude amendments to timely filed proofs of Claim to the extent permitted by applicable law.”); 10.7 (“*On or after the Effective Date*, except as otherwise provided herein, a Claim may not be filed or amended without the authorization of the Bankruptcy Court or the Reorganized Debtor” (emphasis added)). The District’s Amended Proof of Claim was filed eight months before the deadline for amending timely filed proofs of claim. There is no reason why it is not the operative document against which the Third Amended Complaint is measured.

14. As discussed on the record at the July 7, 2015 hearing on the Motion to Enforce, the typical practice in this District is to file an amended claim in the same way that a debtor files an amended plan: by filing the amendatory document. *See* 11 U.S.C. § 1127(a) (“After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan.”). If Exide thought the District was required to file a motion seeking leave to file the Amended Proof of Claim, Exide could and would have said so in the eight months between the District’s filing of the Amended Proof of Claim (on August 22, 2014) and the deadline for amending proofs of claim (April 30, 2015).

15. Unsurprisingly, Exide’s filings with respect to other creditors’ proofs of claim and amendments thereto are inconsistent with Exide’s new theory that timely proofs of claim cannot be amended. In nine omnibus claim objections filed between December 23, 2013 and September 25, 2015, Exide has repeatedly explained how some proofs of claim filed against it “have been amended and superseded by subsequently-filed proofs of claim,” and on that basis has asked the Court to disallow the original, superseded proofs of claim in favor of the amended proofs of

claim (which Exide reserved the right to challenge on the merits).⁶ Each of these pleadings asks that amended proofs of claim filed after the applicable bar dates be treated as the operative proofs of claim rather than the timely-filed original proofs of claim (that the amended versions supersede).⁷

16. **Finally**, at the Motion to Enforce stage, Exide’s motion attacked the amendments to the District’s Original Complaint in the California State Action. *See* Mot. to Enforce ¶¶ 1 n.2 (defining “New Claims” as those that the District asserts “through the Amended Proof of Claim or as *amendments* to the Original Complaint” (emphasis added, parenthetical regarding defined terms omitted)); 8 (observing that “allegations in the Original Complaint largely mirrored those in the Original Proof of Claim”). In support of its argument, Exide filed a 205-page color exhibit [Docket No. 4029] comparing the District’s Third Amended Complaint to the District’s Original Complaint and First Amended Complaint and arguing that the changes in the Third Amended Complaint were so extensive as to constitute “New Claims.” At the hearing on the Motion to Enforce, Exide’s counsel quoted liberally from this exhibit, *see* July 7, 2015 Tr. at 10–11, and the Court’s first question to the District’s counsel was based on the exhibit, *id.* at 20.

17. Following further colloquy, Exide and the District agreed to a procedure by which

⁶ *See* Docket No. 1184 (first omnibus objection) at ¶¶ 13–14; Docket No. 1254 (fourth omnibus objection) at ¶¶ 14–15; Docket No. 1480 (fifth omnibus objection) at ¶¶ 14–15; Docket No. 1676 (seventh omnibus objection) at ¶¶ 14–15; Docket No. 2056 (tenth omnibus objection) at ¶¶ 14–15; Docket No. 2260 (eleventh omnibus objection) at ¶¶ 14–15; Docket No. 2599 (thirteenth omnibus objection) at ¶¶ 14–15; Docket No. 3740 (twentieth omnibus objection) at ¶¶ 17–18; Docket No. 4493 (twenty-third omnibus objection) at ¶¶ 17–18.

⁷ For example, Exide has asked that an amended proof of claim filed after the general unsecured claims bar date (Claim No. 3259), which increased the amount of damages, be left on the claims register in lieu of the timely filed superseded proof of claim (Claim No. 1166). *See* Docket No. 1254-3 at 8. Exide also has asked that an amended proof of claim filed after the governmental bar date (Claim No. 3432), which decreased the amount of damages, be left on the claims register in lieu of the timely filed superseded proof of claim (Claim No. 1928). *See* Docket No. 1480-3 at 6.

each of the three “buckets” of claims – the District’s general unsecured claim, its administrative claim, and the claims that the District contends are excepted from discharge – would be briefed in a separate set of motion papers. *See Order Resolving the Reorganized Debtor’s Motion [to Enforce]* [Docket No. 4414] at ¶¶ 2–4. The District’s GUC Claims Motion is part of that agreed process, and the showing made in the District’s Motion rebuts Exide’s argument in its Motion to Enforce that the Third Amended Complaint is too different from either the Original Complaint or the First Amended Complaint (which was attached to the Amended Proof of Claim).

18. It is only now, in its Objection to the GUC Claims Motion, that Exide tries to walk back its prior position and instead argue that the only relevant inquiry is whether “the Third Amended Complaint relates back to the *Original Proof of Claim* – the operative document in the Bankruptcy Case.” Obj. ¶ 3 (emphasis in original). *See also id.* (“All of the District’s complaints were filed after the Bar Date. So whether one of them relates back to another is irrelevant to whether the District’s ‘amended’ claims relate back to the timely filed Original Proof of Claim.”); *id.* ¶ 18 n.13 (claiming that “timely amendments to the Original Complaint” are irrelevant and asserting that the District must show “timely amendments to the Original Proof of Claim” – yet essentially ignoring the District’s Amended Proof of Claim).

19. The Court should not indulge Exide’s pivot. *Of course* the allegations in the Original Complaint matter; if they did not, the parties would not have spent a year and a half litigating the California State Action. And *of course* parties can amend proofs of claim that were timely filed; if not, Exide’s plan would not read as it does and nearly a dozen of Exide’s omnibus claims objections would not argue what they argue.

C. The Question of Whether the Prepetition Claims in the Third Amended Complaint Relate Back is a Pure Issue of Law Admitting of Only One Answer

20. In accordance with the *Order Resolving the Reorganized Debtor’s Motion [to*

Enforce] [Docket No. 4414] at ¶ 2, the sole issue presented for the Court’s resolution on the GUC Claims Motion is whether the “prepetition claims asserted in the Third Amended Complaint in the District’s California State Action may be pursued by the District.” The Motion demonstrates that the District may indeed pursue such claims because they meet the Rule 15 standard for relation back to the Original Complaint, the Original Proof of Claim, and the Amended Proof of Claim (which incorporated the First Amended Complaint). The Motion involves no claim of excusable neglect because there was no neglect, so Exide’s lead argument in opposition to the GUC Claims Motion, *see* Obj. Point I (¶¶ 27–32), is completely irrelevant.

21. To resolve the GUC Claims Motion, the Court need only assess whether the prepetition allegations in the Third Amended Complaint “assert[] a claim ... that arose out of the conduct, transaction, or occurrence set out ... or attempted to be set out” in the Original Allegations and/or the Amended Proof of Claim. Fed. R. Civ. P. 15(c)(1)(B). As the Supreme Court recently clarified, satisfaction of the relation back standard is a pure question of law: “Rule [15(c)] mandates relation back once the Rule’s requirements are satisfied; it does not leave the decision whether to grant relation back to the district court’s equitable discretion.” *Krupski v. Costa Crociere S. p. A.*, 560 U.S. 538, 553, 130 S. Ct. 2485, 2496 (2010). *See* Mot. ¶¶ 42–43.

22. The GUC Claims Motion, including its detailed 78-page claims chart, specifies how the portions of the Third Amended Complaint dealing with prepetition conduct are either substantially identical to the Original Complaint, Original Proof of Claim, and the Amended Proof of Claim, or fall into one of two groups of permissible modifications to those earlier documents because they arise out of the same general conduct. *See* Mot. ¶¶ 3–9. Exide does not meaningfully dispute or even engage this analysis, and instead endeavors to compare the Third Amended Complaint solely to the Original Proof of Claim. As detailed above, Exide’s new

position fails because it gives no effect to the timely Amended Proof of Claim and it is directly contrary to the arguments Exide made in support of its Motion to Enforce, which compared the Third Amended Complaint to the Original Complaint.

23. Even if the relation back analysis is conducted solely with reference to the Original Proof of Claim, disregarding everything that happened thereafter (including the filing of the District's timely Amended Proof of Claim), the Original Proof of Claim is nevertheless clearly grounded in the same "conduct, transaction, or occurrence" that is now the focus of the Third Amended Complaint. *See Bensel v. Allied Pilots Ass'n*, 387 F.3d 298, 310 (3d Cir. 2004) (relation back analysis looks to see "whether the opposing party has had fair notice of the general fact situation and legal theory upon which the amending party proceeds"). The Original Proof of Claim put Exide on notice that its regulator (the District) was seeking to hold Exide liable for approximately \$40 million in penalties on account of lead and arsenic emissions at the Vernon facility that were emitted in violation of the District's rules and regulations. That is why, immediately upon receipt of the Original Complaint, Exide sent a letter to the District observing that the Original Complaint "involves alleged penalties *virtually mirroring* those in the proof of claim [*i.e.*, the Original Proof of Claim] filed in the bankruptcy case by [the District]." Jan. 21, 2014 Ltr. (Pfister Decl. Ex. 1) at 1 (emphasis added). What was plain to Exide then – that the Original Complaint represented another form of the same allegations set forth in the Original Proof of Claim – remains clear today.

24. Exide's other arguments fare no better. The Objection breaks the District's "new claims" into three categories: (i) violations based on the Non-Prosecution Agreement; (ii) deceptive and dishonest concealment of its emission levels from the District; and (iii) violations that allegedly occurred on different dates or in violation of different regulatory

requirements than those included in the Original Proof of Claim. *See* Obj. ¶ 42. Exide’s arguments with regard to each of those categories fail when measured against the analysis in the GUC Claims Motion.

25. ***Violations based on the Non-Prosecution Agreement.*** The GUC Claims Motion explains how allegations related to a lead-contaminated byproduct of Exide’s operations at the Vernon Facility merely add an alternative evidentiary explanation to the Original Allegations that Exide emitted too much lead into the air at its Vernon facility, and that Exide failed to store all materials capable of generating any amount of fugitive lead-dust in sealed, leak-proof containers. Mot. ¶¶ 8–9, 49–58. Exide makes three arguments to the contrary, each of which fails.

- ***First***, Exide argues that the Original Proof of Claim does not allege “that Exide failed to store materials capable of generating any amount of fugitive lead-dust in sealed, leak-proof containers,” even though Exide admits that such allegations were included in the Original Complaint, Obj. ¶ 44, and are indisputably encompassed by the Amended Proof of Claim (which attaches and incorporates by reference the First Amended Complaint). The GUC Claims Motion sets out how the improper storage of materials capable of generating fugitive lead-dust is simply a contributing cause of the discharge of lead into the atmosphere. *See* Mot. ¶¶ 35, 49–50 & 53; *id.* at Ex. A ¶¶ 6–10, 118, 123–24, 134, 142, 150, 159, 167, 212–13, 215–16, 218–19.
- ***Second***, Exide claims that the District’s allegations that Exide knowingly or recklessly made false statements in its Annual Compliance Certificate reports represent “conduct that is separate and distinct from emitting ‘too much lead’ into

the atmosphere.” Obj. ¶ 46. But as the GUC Claims Motion explains, the allegations regarding Exide’s false certifications of compliance amplify the factual circumstances surrounding the Original Allegations (for example, the reference to Exide’s lengthy history of violating District Rules) and are relevant to Exide’s state of mind, which goes to culpability and damages. *See* Mot. ¶ 47–48; *id.* at Ex. A ¶ 118, 127–30, 136–37, 144–46, 152–54, 161–63, 169–71.

- **Third**, Exide makes a convoluted argument that causes of action relating to violations of rules that were not in effect at the time those causes of action allegedly arose cannot represent alternative evidentiary explanations for violations set forth in the Original Proof of Claim. Obj. ¶¶ 47–48.⁸ There is no support for this theory, which is contradicted by relevant case law. *See In re Ben Franklin Hotel Assocs.*, 186 F.3d 301, 309 (3d Cir. 1999) (affirming decision to allow a post-bar date amendment to a complaint that, among other things, added an additional cause of action against a debtor where the cause of action arose from the same set of operative facts as those pled in the original complaint and incorporated into the plaintiff’s proof of claim in the bankruptcy case).

26. ***Deceptive and Dishonest Concealment of Emission Levels***: The GUC Claims Motion also details how the Third Amended Complaint’s causes of action pertaining to

⁸ Exide cites *In re Unroe*, 937 F.2d 346, 349 (7th Cir. 1991) for the proposition that the “same type of conduct for different time period does not arise out of the same ‘conduct, transaction, or occurrence[.]’” Obj. ¶ 47. *Unroe*’s holding is far more limited, stating only that as to tax claims, the IRS should not be able “to file a claim for one tax year, and then, after the bar date, ‘amend’ by right the claim to include any number of additional tax years.” *Unroe*, 937 F.2d at 349. To the contrary, the Supreme Court has more recently explained that relation back is improper for a newly-asserted claim that “asserts a new ground for relief supported by facts that differ **in both time and type** from those the original pleading set forth.” *Mayle v. Felix*, 545 U.S. 644, 650, 125 S. Ct. 2562, 2566 (2005) (emphasis added).

concealment of emissions levels stem from the Original Allegations. Mot. ¶ 52. Exide’s response – that the Original Proof of Claim “does not involve any allegations that Exide concealed emissions levels or deliberately deceived or misled the District,” Obj. ¶¶ 49–50 – is incorrect. Deliberate concealment and deception are pertinent to Exide’s state of mind, which has been at issue from the very outset. The Original Proof of Claim alleges that Exide “failed to comply with SCAQMD Rules and committed a separate violation giving rise to civil penalties of ... \$75,000 per day for each and every day of *willful and intentional emissions violations* pursuant to California Health and Safety Code sections 42402 through 42402.3.” See GUC Claims Mot. ¶ 52; *id.* at Ex. A ¶¶ 208–10, 224–25.

27. ***Violations That Allegedly Occurred on Different Dates or in Violation of Different Regulatory Requirements.*** The GUC Claims Motion explains that an amendment clarifying the period of time over which ongoing and continuous wrongful conduct took place will relate back, *see* Mot. ¶¶ 54–55, as will an amendment setting forth new theories of recovery on the same core set of facts, *see id.* ¶¶ 51–53. In support of its response (that violations that took place on different dates or are based on different regulatory requirements than those set forth in the Original Proof of Claim do not relate back), Exide marshals just a single case, *In re Blue Coal Corp.*, 166 B.R. 816 (Bankr. M.D. Pa. 1993). *Blue Coal* concerns amendment of a tax claim to cover a different tax year, which is obviously distinguishable because the income taxes at issue were levied on an annual basis such that “[e]ach year ... the origin of a new liability and of a separate cause of action.” *Id.* at 822 (internal quotation marks omitted). *Blue Coal* does not undermine the authorities discussed in the GUC Claims Motion. See GUC Claims Mot. ¶¶ 54–55; *id.* at Ex. A ¶¶ 28–116, 173–79, 182–87, 202–07, 220–21.

CONCLUSION

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

Dated: December 18, 2015

By: /s/ Jack Shrum

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

In re:

EXIDE TECHNOLOGIES,

Reorganized Debtor.¹

Chapter 11

Case No. 13-11482 (KJC)

CERTIFICATE OF SERVICE

The undersigned certifies that on December 18, 2015, I caused a true and correct copy of the foregoing to be served upon all parties via CM/ECF and upon the persons below in the manner indicated.

Date: December 18, 2015

/s/ Jack Shrum

“J” Jackson Shrum (#4757)

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.

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