

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	:	Chapter 11
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EXIDE TECHNOLOGIES,	:	Case No. 13-11482 (KJC)
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Debtor. <sup>1</sup>	:	
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**THE REORGANIZED DEBTOR’S STATUS CONFERENCE REPORT  
REGARDING LITIGATION WITH THE SOUTH COAST AIR QUALITY  
MANAGEMENT DISTRICT**

On October 15, 2015, this Court entered an agreed order (the “Scheduling Order”) establishing a schedule for the briefing of certain issues in pending litigation between Exide Technologies, the reorganized debtor in the above-captioned case (“Exide” or the “Reorganized Debtor”), and the South Coast Air Quality Management District (the “District”) initiated by the Reorganized Debtor’s motion to enforce the discharge.<sup>2</sup> The parties completed their briefing on December 18, 2015. The Scheduling Order provides that the parties may submit a status conference report setting forth their respective suggestions for the process regarding the Court’s disposition of the briefed matters. The Reorganized Debtor hereby submits its status conference report.

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<sup>1</sup> 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.

<sup>2</sup> 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 (Docket No. 4023).

## **STATUS REPORT**

### **I. THIS COURT CAN DISPOSITIVELY RULE ON THE ISSUES BEFORE IT.**

1. The Reorganized Debtor has raised issues with respect to each of the Prima Facie Discharge Exception Motion, the Administrative Claim Objection, and the GUC Claims Motion<sup>3</sup> that, if accepted by this Court, would result in rulings in favor of the Reorganized Debtor in each instance as a matter of law. These issues are as follows.

#### **A. The Prima Facie Discharge Exception Motion<sup>4</sup>**

2. As set forth in the briefing, there are four complementary, but independent, legal reasons by which this Court should dispose of the District's Prima Facie Discharge Exception Motion:

- First, the District has failed to allege any facts to satisfy one of section 523(a)(2)(A)'s essential elements – i.e., that it suffered a loss and damages as a proximate result of Exide's alleged fraud. The District is seeking to collect penalties of a criminal nature that accrue formulaically and do not contemplate redressing any damages suffered by the District. Thus, by definition, the penalties at issue cannot satisfy section 523(a)(2)(A)'s "loss and damages" element.
- Second, the non-compensatory penalties sought by the District squarely fall into the section 523(a)(7) individual debtor discharge exception.<sup>5</sup> Congress specifically chose not to include an exception for non-compensatory penalties embodied in section 523(a)(7) when enacting the narrow corporate discharge exception in section 1141(d)(6). Section 523(a)(7) penalties that are not "compensation for actual pecuniary loss," cannot by definition, qualify as "loss and damages." Thus, as a matter of law, the District has not pled a prima facie case for exception to discharge in the chapter 11 context.

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<sup>3</sup> As defined in the Scheduling Order (Docket No. 4528).

<sup>4</sup> Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Prima Facie Discharge Exception Motion, the Administrative Claim Objection, and/or the GUC Claims Motion, as applicable.

<sup>5</sup> See Dep't of Envtl. Prot. v. Thebes (In re Thebes), 2011 Bankr. LEXIS 1206, \*2 (Bankr. M.D. Pa. Mar. 29, 2011) (governmental strict liability per diem civil penalties assessed for environmental violations are penal in nature and do not constitute compensation for any pecuniary loss and thus fall into section 523(a)(7)).

- Third, the District has failed to plead any facts to establish that Exide obtained money, property, services or credit from the District (or any relevant source) by fraud as required by the plain language of section 523(a)(2)(A). Exide did not receive a single penny arising from the fraud alleged by the District, and the District never transferred anything of value to Exide.
- Fourth, the District missed the September 16, 2013 deadline to file a non-dischargeability complaint and thus is time-barred from asserting that its claims fall within the corporate discharge exception.

**B. The Administrative Claim Objection**

3. The Reorganized Debtor's objection to the District's assertion of administrative expense priority also presents discrete legal issues on which this Court should dispositively rule. Two alternative legal bases mandate denial of the District's administrative priority assertion as a matter of law:

- First, the Third Circuit's holding in Pa. Dep't of Env'tl. Res. v. Tri-State Clinical Labs., Inc., 178 F.3d 685, 697 (3d Cir. 1999) forecloses treatment of the penalties sought by the District as administrative expenses. The District already has admitted the non-compensatory, criminal nature of the penalties it seeks. Straightforward application of the Tri-State rule requires denial of the District's administrative priority claim for these penalties.
- Second, the District has not pled the elements to show entitlement to administrative expense treatment.

4. Beyond the foregoing, the Debtor has presented other legal issues that, if accepted by Court, would result in disallowance of most of the District's alleged administrative expense claims. These issues are as follows:

- First, the District cannot show that the bulk of its alleged administrative expense claims are based on anything more than the continuation of open and notorious prepetition activity. Exide operated the same allegedly deficient equipment and engaged in the same chip handling practices both pre- and post-petition. Independent of Tri-State, fines resulting from Exide's alleged postpetition failure to abate these alleged prepetition violations are not entitled to administrative priority.
- Second, the District is not entitled to administrative expense treatment for penalties related to postpetition periods during which the Vernon facility was not operating.

5. The Strang Declaration filed in support of Exide's Administrative Claim Objection provides a sufficient factual foundation, which the District has failed to rebut, for this Court to dispose of most of the District's alleged administrative expense request based upon these arguments. However, the Reorganized Debtor can proffer further evidence related to these issues if the Court deems it desirable to enable it to make its ruling.

### C. The GUC Claims Motion

6. Based on the existing record and briefing, the Court also should deny the relief requested in the District's GUC Claims Motion as matter of law. It is indisputable that the Original Proof of Claim is the only claim that the District timely-filed before the governmental bar date. It also is indisputable that the claims asserted by the District in the Third Amended Complaint were filed for the first time after the Effective Date of Exide's Plan, which disallowed, without further action, any claims – new or amended – filed post-effective date.<sup>6</sup>

Given these facts, the GUC Claims Motion should be denied for the following reasons:

- First, the District's failure to seek dispensation to file its claims based on the excusable neglect standard is fatal to its GUC Claims Motion. Regardless of whether the District's claims are new or amended, the only way disallowed claims are revived is upon a showing of excusable neglect.<sup>7</sup> Therefore, as a matter of law, the District cannot prosecute additional matters that deviate from those in its Original Proof of Claim.
- Second, even if the District were simply amending its Original Proof of Claim with the various iterations of its state court complaint, the District has not addressed the

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<sup>6</sup> See Plan Art. 10.7 (“[o]n 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, and, to the extent such authorization is not received, any such new or amended Claim filed shall be deemed Disallowed in full and expunged without any further notice to or action, order, or approval of the Bankruptcy Court.”)

<sup>7</sup> Because claims asserted in the Third Amended Complaint have already been disallowed, the only remedy to revive a claim that has been disallowed pursuant to an order of the Bankruptcy Court is pursuant to section 502(j) upon a showing of excusable neglect – regardless if such claims are new or relate back. In re JWP Info. Servs., Inc., 231 B.R. 209, 211 (Bankr. S.D.N.Y. 1999) (an application for reconsideration of an order expunging creditor's claim may be granted if movant demonstrates that its failure to respond was due to “excusable neglect.”).

proper legal standard to amend a claim under applicable bankruptcy law. It is not simply Rule 15 that applies to claim amendments that are attempted (i) post-bar date, (ii) post-confirmation date, or (iii) post-effective date pursuant to a plan that automatically disallows post-effective date amendments.<sup>8</sup> The respective standards in those situations are (i) Rule 15 subject to scrutiny, (ii) compelling reasons, and (iii) excusable neglect (once again). Having failed to address these amendment standards, the District's GUC Claims Motion must be denied as a matter of law.

- Third, this Court should exercise its discretion to deny the District's untimely attempt to assert a disproportionately increased claim amount – i.e., doubling of its original claim from \$40 million to \$80 million.

7. Finally, even applying the District's watered-down "relation back" theory to its claims, the District has not shown and cannot prove that the New Claims relate back to the same "conduct, transaction, or occurrence" addressed in the Original Proof of Claim. The Reorganized Debtor can proffer further evidence related to these issues if the Court deems it desirable to enable it to make its ruling.

## **II. THE REORGANIZED DEBTOR IS AMENABLE TO MEDIATION.**

8. The Reorganized Debtor believes that it would prevail were the Court to rule on the issues before it. The Reorganized Debtor, however, is amenable to the Court's suggestion that these matters be referred to a mediator. A successful mediation resulting in an agreed upon final resolution of these matters – including the underlying litigation in California – would unquestionably save the parties, and the courts, tremendous time, money and resources. The District has stated that it will appeal any adverse ruling, so even dispositive rulings against it presumably will not end these matters. Thus, the Reorganized Debtor believes mediation would be worthwhile before this Court rules on the pending matters. Given the bankruptcy-specific legal issues at the center of the matters pending before the Court (i.e., corporate discharge

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<sup>8</sup> See Plan Art. 10.7.

exception, administrative expense test, and claims bar date), the Reorganized Debtor proposes that this Court appoint a bankruptcy judge, from the District of Delaware or elsewhere, as mediator.

### **III. THE REORGANIZED DEBTOR'S SUGGESTION FOR PROCEEDING**

9. There is a clear path for this Court to rule on and ultimately dispose of the issues raised in the various pleadings before it. The Court can now schedule a hearing for a time after the mediation is concluded to hear oral argument on the dispositive issues, including those outlined above. Depending upon the outcome of those two events – mediation and dispositive rulings – the Court could thereafter schedule any remaining issues for evidentiary hearing and address any discovery or other issues relating to such matters.

10. In any case, this Court should reject the District's invitation to defer ruling on the bankruptcy issues until the conclusion of the California State Court Action,<sup>9</sup> which would take years and cost millions of dollars. Resumption of the California State Action would bless a discharge violation for untimely general unsecured claims worth pennies on the dollar. Moreover, the discrete bankruptcy issues here – dischargeability, administrative expense priority, and the unsecured claims bar date – are within this Court's specific purview and the California State Action will not elucidate these questions.

### **CONCLUSION**

WHEREFORE, the Reorganized Debtor respectfully requests that this Court use the currently scheduled non-evidentiary hearing on February 2, 2016 to (i) appoint a mediator, (ii) order the parties to attend mediation, (iii) set oral argument on the Prima Facie Discharge Motion,

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<sup>9</sup> As defined in the Administrative Claim Objection.

the Administrative Claim Objection, and the GUC Claims Motion for a date after the conclusion of the mediation, if it does not resolve these matters, and (d) schedule any further hearings as necessary.

Dated: Wilmington, Delaware  
January 26, 2016

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