

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)
	:	
Debtor. <sup>1</sup>	:	<b>Related Docket Nos. 4821, 4847, 4863, 4865, 4868</b>
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**CERTIFICATION OF COUNSEL IN SUPPORT OF ENTRY OF ORDER GRANTING STIPULATION CONCERNING REORGANIZED DEBTOR’S PLAN INJUNCTION MOTION AND VERNON TORT CLAIMS TRUSTEE’S ABSTENTION MOTION**

The undersigned counsel for the reorganized debtor in the above-captioned bankruptcy case (“Reorganized Debtor”) hereby certifies as follows:

On August 21, 2017, Reorganized Debtor filed the Motion for Entry of an Order (I) Enforcing the Plan Injunction and Vernon Tort Claims Term Sheet and (II) Awarding Costs and Attorney’s Fees (Docket No. 4821) (the “Plan Injunction Motion”).

On September 7, 2017, the Vernon Tort Claims Trustee (the “Tort Trustee”) filed the Motion of Vernon Tort Claims Trustee, Pursuant to 28 U.S.C. § 1334, for Entry of an Order Abstaining from Adjudicating Relief Requested in Reorganized Exide’s Motion for Injunctive Relief (Docket No. 4847) (the “Abstention Motion”).

On September 21, 2017, Reorganized Debtor filed the Objection to Motion of Vernon Tort Claims Trustee for Entry of an Order Abstaining From Adjudicating Reorganized Debtor’s Motion to Enforce the Plan Injunction and Vernon Tort Claims Term Sheet (Docket No. 4863).

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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 is located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.

On September 21, 2017, the Tort Trustee filed the Objection to Reorganized Debtor's Motion for Entry of an Order (I) Enforcing the Plan Injunction and Vernon Tort Claims Term Sheet and (II) Awarding Costs and Attorneys Fees (Docket No. 4865).

On September 25, 2017, the Tort Trustee filed the Reply in Support of Motion of Vernon Tort Claims Trustee, Pursuant to 28 U.S.C. § 1334, for Entry of an Order Abstaining from Adjudicating Relief Requested in Reorganized Exide's Motion for Injunctive Relief (Docket No. 4868).

On September 28, 2017, the Court held a hearing (the "Hearing") on the Plan Injunction Motion, the Abstention Motion, and the related pleadings. At the Hearing, Reorganized Debtor and the Tort Trustee stated on the record that they had reached a resolution of the Plan Injunction Motion and the Abstention Motion.

Reorganized Debtor and the Tort Trustee have entered into the Stipulation Concerning Reorganized Debtor's Plan Injunction Motion and the Vernon Tort Claims Trustee's Abstention Motion (the "Stipulation").

WHEREFORE, the Reorganized Debtor respectfully requests that the Court enter the attached Order approving the Stipulation at its earliest convenience. The Order is attached hereto as Exhibit A, and the Stipulation is annexed as Exhibit 1 to the Order.

Dated: October 19, 2017  
Wilmington, Delaware

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

/s/ Jason M. Liberi

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*Counsel for the Reorganized Debtor*

**EXHIBIT A**

**PROPOSED ORDER**

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)
	:
Debtor. <sup>1</sup>	: <b>Related Docket Nos. 4821, 4847, 4863, 4865, 4868</b>
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**ORDER GRANTING STIPULATION CONCERNING REORGANIZED DEBTOR’S PLAN INJUNCTION MOTION AND THE VERNON TORT CLAIMS TRUSTEE’S ABSTENTION MOTION**

Upon the consideration of the stipulation (the “Stipulation”) by and among Reorganized Debtor and the Vernon Tort Claims Trustee attached hereto as Exhibit 1; and as agreed by Reorganized Debtor and the Vernon Tort Claims Trustee on the record during the September 28, 2017 hearing before this Court; and good and sufficient cause appearing therefor; it is hereby:

**ORDERED, ADJUDGED AND DECREED that:**

1. The Stipulation is APPROVED.
2. Reorganized Debtor and the Vernon Tort Claims Trustee shall comply with the terms and conditions of the Stipulation, which are entered by Order of the Court.
3. This Court shall retain jurisdiction with respect to all matters arising from the implementation or interpretation of this Order.

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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 is located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.

Dated: \_\_\_\_\_, 2017  
Wilmington, Delaware

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THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1 TO ORDER**

**STIPULATION**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	:	Chapter 11
	:	
EXIDE TECHNOLOGIES,	:	Case No. 13-11482 (KJC)
	:	
Debtor. <sup>1</sup>	:	<b>Related Docket Nos. 4821, 4847, 4863, 4865, 4868</b>
	:	
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**STIPULATION CONCERNING REORGANIZED DEBTOR’S PLAN INJUNCTION  
MOTION AND THE VERNON TORT CLAIMS TRUSTEE’S ABSTENTION MOTION**

WHEREAS, on August 21, 2017, Reorganized Debtor filed the Motion for Entry of an Order (I) Enforcing the Plan Injunction and Vernon Tort Claims Term Sheet and (II) Awarding Costs and Attorney’s Fees (Docket No. 4821) (the “Plan Injunction Motion”).

WHEREAS, on September 7, 2017, the Vernon Tort Claims Trustee (the “Tort Trustee”) filed the Motion of Vernon Tort Claims Trustee, Pursuant to 28 U.S.C. § 1334, for Entry of an Order Abstaining from Adjudicating Relief Requested in Reorganized Exide’s Motion for Injunctive Relief (Docket No. 4847) (the “Abstention Motion”).

WHEREAS, on September 7, 2017, the Tort Trustee filed a Complaint for Damages against Reorganized Debtor in the Superior Court of the State of California for the County of Los Angeles, Central District, captioned *Craig R. Jalbert v. Exide Technologies*, Case No. BC674961 (the “Parallel Proceeding”).

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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 is located at 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.



WHEREAS, on September 21, 2017, the Tort Trustee objected to the relief sought by Reorganized Debtor's Plan Injunction Motion (Docket No. 4865), and Reorganized Debtor objected to the relief sought by the Tort Trustee's Abstention Motion (Docket No. 4863).

WHEREAS, on September 25, 2017, the Tort Trustee filed a reply in further support of his Abstention Motion. (Docket No. 4868).

WHEREAS, on September 28, 2017, the Court held a hearing (the "Hearing") on the Plan Injunction Motion and the Abstention Motion and, during the Hearing, Reorganized Debtor and the Tort Trustee stated on the record that they had reached a resolution of the Plan Injunction Motion and the Abstention Motion.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Reorganized Debtor and the Tort Trustee as follows:

1. This Stipulation shall resolve all matters and disputes that have arisen up to September 28, 2017 between Reorganized Debtor and the Tort Trustee in respect of the Vernon Tort Claims Term Sheet (the "Term Sheet") (annexed as Exhibit 8.1 to the Fourth Amended Plan of Reorganization of Exide Technologies (the "Plan"), the Plan, and the Confirmation Order (as defined in the Plan), including the Plan Injunction Motion, Abstention Motion, and Parallel Proceeding. For the avoidance of doubt, (a) except as expressly set forth in this Stipulation, the rights and obligations of Reorganized Debtor and the Tort Trustee under the Term Sheet, Plan, Confirmation Order, and applicable law from and after September 29, 2017 shall be governed in all respects by the Term Sheet, Plan, Confirmation Order, and applicable law, and (b) the rights and obligations of Reorganized Debtor and the Tort Trustee in respect of any matters not expressly addressed by this Stipulation shall not be affected by this Stipulation.

2. Reorganized Debtor shall execute the form of Assignment Agreement, attached hereto as Annex A, by and among Exide Technologies and Craig R. Jalbert, CIRA, solely in his capacity as Trustee of the Vernon Tort Claims Trust (the “Assignment Agreement”), which shall provide that the Assignment Agreement is governed by, construed in accordance with, and enforced under the laws of the State of California, without regard to its principles of conflicts of laws.

3. Within five (5) business days of entry of an Order by the Bankruptcy Court approving this Stipulation, Reorganized Debtor shall tender the executed version of the Assignment Agreement to the Tort Trustee. The Tort Trustee shall accept such Assignment Agreement and, within ten (10) business days of entry of an Order by the Bankruptcy Court approving this Stipulation, the Tort Trustee shall provide Reorganized Debtor with an executed copy of the Assignment Agreement.

4. Within five (5) business days of entry of an Order by the Bankruptcy Court approving this Stipulation, the Tort Trustee shall dismiss the Parallel Proceeding with prejudice.

5. The Tort Trustee shall not seek to lift, and shall maintain, the stay of the Recovery Litigation (as that term is defined in the Term Sheet) as to Reorganized Debtor, in accordance with the Term Sheet.

6. Reorganized Debtor may be subject to third-party discovery in litigation by or against Reorganized Debtor’s insurers to determine whether any insurance policies provide coverage for the claims asserted against Reorganized Debtor in the Recovery Litigation (such litigation, “Coverage Litigation”).

7. Reorganized Debtor shall not advocate as to the merits in any Coverage Litigation.

8. Reorganized Debtor shall comply with all good faith requests of the Tort Trustee to take any ministerial acts necessary to implicate insurance coverage in respect of the claims asserted against Reorganized Debtor in the Recovery Litigation, including, without limitation, giving formal notices to Reorganized Debtor's insurers and providing the Tort Trustee with additional assignments of the right to bring Coverage Litigation to the extent not included under the Assignment Agreement; but, in any event, such ministerial acts shall not include taking defaults or judgments in the Recovery Litigation.

9. Each party shall bear its own costs and fees in connection with the Plan Injunction Motion and the Abstention Motion.

*[Signatures appear on following page.]*

Dated this 19th Day of October, 2017

<p>SKADDEN, ARPS, SLATE, MEAGHER &amp; FLOM LLP</p> <p>Anthony W. Clark (I.D. No. 2051) Jason M. Liberi (I.D. No. 4425) One Rodney Square P.O. Box 636 Wilmington, Delaware 19899-0636 Telephone: (302) 651-3000 Fax: (302) 651-3001</p> <p>- and -</p> <p>J. Eric Ivester Four Times Square New York, New York 10036-6522 Telephone: (212) 735-3000 Fax: (212) 735-2000</p> <p>- and -</p> <p>By: <u>/s/ Amy L. Van Gelder</u> Albert L. Hogan III Amy L. Van Gelder 155 N. Wacker Dr. Chicago, Illinois 60606 Telephone: (312) 407-0700 Fax: (312) 407-0411</p> <p><i>Counsel for the Reorganized Debtor</i></p>	<p>THE ROSNER LAW GROUP LLC</p> <p>Frederick B. Rosner (DE #3995) Scott J. Leonhardt (DE #4885) 824 North Market Street, Suite 810 Wilmington, Delaware 19801 Telephone: (302) 777-1111</p> <p>- and -</p> <p>BROWN RUDNICK LLP</p> <p>By: <u>/s/ Andrew M. Carty</u> William R. Baldiga Andrew M. Carty Jessica N. Meyers Seven Times Square New York, New York 10036 Telephone: (212)-209-4800 Facsimile: (212) 209-4801</p> <p><i>Counsel to Craig R. Jalbert, solely in his capacity as Trustee of the Vernon Tort Claims Trust</i></p>
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**ANNEX A TO STIPULATION**

**FORM OF ASSIGNMENT**

**ASSIGNMENT AGREEMENT**

This ASSIGNMENT AGREEMENT (this “Agreement”) dated October 18, 2017, is entered by and among Exide Technologies (“Exide” or “Assignor”) and Craig R. Jalbert, CIRA, solely in his capacity as Trustee of the Vernon Tort Claims Trust (the “Tort Trustee” or “Assignee”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Vernon Tort Claims Term Sheet, Exhibit 8.1 to the Fourth Amended Plan of Reorganization of Exide Technologies, as amended (the “Term Sheet”).

**WITNESSETH**

WHEREAS, Vernon Personal Injury Litigation is currently pending in the Superior Court of California, County of Los Angeles against, among others, Assignor;

WHEREAS, ACE American Insurance Company or related companies (“ACE American”) issued to Exide Technologies excess insurance policy numbers XCP G22909897, XCP G23715636, XCP G23873606, XCP G24648199, XCP G24873894, XCP G24873884, and XCP G24874837 (the “ACE American Policies”);

WHEREAS, ACE Property & Casualty Insurance Company or related companies (“ACE Property”) issued to Exide Technologies umbrella insurance policy numbers G25832802, G27046095, and G27053543 (the “ACE Property Policies”);

WHEREAS, American Guarantee and Liability Insurance Company or related companies (“American Guarantee”) issued to Exide Technologies excess insurance policy numbers AEC 9671164-05 and AEC 9671164-06 (the “American Guarantee Policies”);

WHEREAS, American Home Assurance Company or related companies (“American Home”) issued to Exide Technologies general liability insurance policy number GL 457-06-01 RA (the “American Home Policy”);

WHEREAS, American Zurich Insurance Company or related companies (“American Zurich”) issued to Exide Technologies excess insurance policy numbers AEC 5085879 00, AEC 5085879 01, AEC 5085879 02, AEC 9671164 00, AEC 9671164 01, AEC 9671164 02, AEC 9671164 03, and AEC 9671164 04 (“the American Zurich Policies”);

WHEREAS, Continental Casualty Company or related companies (“Continental Casualty”) issued to Exide Technologies directors and officers excess insurance policy number 4253374401 (the “Continental Casualty Policy”);

WHEREAS, Federal Insurance Company, Chubb Specialty Insurance, or related companies (“Federal”) issued to Exide Technologies directors and officers insurance policy number 8223-7519 and directors and officers excess insurance policy number 8223-75324 (the “Federal Policies”);

WHEREAS, First State Insurance Company or related companies (“First State”) issued to Exide Technologies general liability insurance policy number 20994 (the “First State Policy”);

**EXECUTION VERSION**

WHEREAS, Great American Insurance Company of New York or related companies (“Great American”) issued to Exide Technologies excess insurance policy numbers EXC 3108391, EXC 2195032, EXC 8634333, EXC 2098101, EXC 2105816, EXC 4646356, and EXC 4647462 (the “Great American Policies”);

WHEREAS, National Union Fire Insurance Company of Pittsburgh, Pennsylvania or related companies (“National Union”) issued to Exide Technologies general liability insurance policy numbers GLA 116-77-78 RA, GL 199-68-62 RA, GL 117-04-60 RA, GL 117-04-99 RA, GL 590-63-95 RA, GL 590-64-34 RA, GL 590-99-46 RA, GL 590-99-75 RA, and GL 146-61-81 RA, and umbrella insurance policy numbers BE 309-64-42, BE 932-43-26, BE 357 56 32, BE 27471292, and 15972397 (the “National Union Policies”);

WHEREAS, St. Paul Fire and Marine Insurance Company or related companies (“St. Paul”) issued to Exide Technologies excess insurance policy number QI09001244 (the “St. Paul Policy”);

WHEREAS, Transit Casualty Company or related companies (“Transit Casualty”) issued to Exide Technologies general liability insurance policy number GLA 74 05 28 (the “Transit Casualty Policy”);

WHEREAS, Winterthur International America Insurance Company or related companies (“Winterthur”) issued to Exide Corporation and/or Exide Technologies Commercial Lines policy numbers GL 003-09-34-00, GL 003-09-34-01, and GL 003-09-34-02, and Commercial Umbrella insurance policy numbers HFL 004-29-38-01 and CU 005-00-27-02 (the “Winterthur Policies”);

WHEREAS, XL Insurance America, Inc. (“XL”) issued to Exide Technologies Commercial Lines policy numbers US00006422LI03A, US00006422LI04A, US00006422LI05A, and US00006422LI06A, Commercial Umbrella policy numbers US00006428LI03A, US00006428LI04A, US00006428LI05A, US00006428LI06A, US00006428LI07A, and US00006428LI08A, and Excess Liability policy numbers US00034391LI11A, US00034391LI12A, and US00034391LI13A (the “XL Policies”);

WHEREAS, Zurich American Insurance Company or related companies (“Zurich”) issued to Exide Technologies general liability insurance policy numbers GLO9260592-00, GLO9260592-01, GLO9260592-02, GLO9260592-03, GLO9260592-04, GLO9260592-05, and GLO9260592-06 (the “Zurich Policies”);

WHEREAS, the ACE American Policies, the ACE Property Policies, the American Guarantee Policies, the American Home Policy, the American Zurich Policies, the Continental Casualty Policy, the Federal Policies, the First State Policy, the Great American Policies, the National Union Policies, the St. Paul Policy, the Transit Casualty Policy, the Winterthur Policies, the XL Policies, and the Zurich Policies shall be collectively referenced herein as the “Policies” and each a “Policy,” and ACE American, ACE Property, American Guarantee, American Home, American Zurich, Continental Casualty, Federal, First State, Great American, National Union, St. Paul, Transit Casualty, Winterthur, XL, and Zurich shall be collectively referenced herein as the “Insurers” and each an “Insurer”;

**EXECUTION VERSION**

WHEREAS, the Term Sheet sets forth the terms and conditions for a consensual resolution of the treatment of Vernon Tort Claims under the Fourth Amended Plan of Reorganization of Exide Technologies (the “Plan”);

WHEREAS, the Term Sheet provides that the Tort Trustee shall be permitted to pursue, from and after the Plan Effective Date (which was April 30, 2015), civil litigation on account of Vernon Tort Claims against Exide and the Exide Parties, with recourse only to applicable insurance, if any, which may provide coverage to Exide, for the purpose of augmenting the Trust for the benefit of its beneficiaries, including plaintiffs in the Vernon Personal Injury Litigation (collectively, “Recovery Litigation”);

WHEREAS, the Term Sheet further provides that Recovery Litigation shall proceed only in instances where the Tort Trustee decides that there is a good faith, reasonable basis to believe that the Vernon Tort Claims are insured by Exide’s third party insurers;

WHEREAS, in the event applicable insurers fail to pay the defense fees and costs of Exide in its capacity as a defendant to Recovery Litigation, and upon Exide’s written demand to the Tort Trustee with evidence of such failure, then the Term Sheet requires that the Tort Trustee shall, in his discretion, either (a) dismiss the Recovery Litigation against Exide or (b) dismiss or stay the Recovery Litigation (including discovery propounded to Exide) and promptly commence appropriate coverage litigation. In such event, the Term Sheet requires that Exide then shall irrevocably assign to the Tort Trustee the right to bring such insurance coverage litigation on behalf of Exide as to all policies that the Tort Trustee believes may pertain to the Recovery Litigation;

WHEREAS, the Term Sheet was incorporated into Exide’s Plan at Article VIII and Exhibit 8.1;

WHEREAS, on March 27, 2015, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered Findings of Fact, Conclusions of Law and Order Confirming Fourth Amended Plan of Reorganization of Exide Technologies (the “Confirmation Order”);

WHEREAS, the Confirmation Order approved the Plan, including the Term Sheet, and incorporated the provisions of Article VIII of the Plan into the Confirmation Order;

WHEREAS, the Plan, including the Term Sheet, became effective on April 30, 2015 (the “Plan Effective Date”);

WHEREAS, the Tort Trustee believes that he has a good faith, reasonable basis to believe that the Vernon Tort Claims pursued against Assignor in the Vernon Personal Injury Litigation are covered under the Policies;

WHEREAS, none of the Insurers has accepted coverage for the Vernon Tort Claims or expressed a willingness to pay for the costs of defense related to the Vernon Personal Injury Litigation; and



**EXECUTION VERSION**

WHEREAS, in such circumstances, the Term Sheet requires the Tort Trustee to elect to (a) dismiss the Recovery Litigation against Exide or (b) dismiss or stay the Recovery Litigation against Exide and commence coverage litigation against the Insurers and further requires, in that event, that Assignor irrevocably assign to the Tort Trustee the right to bring insurance coverage litigation on behalf of Assignor as to any Policies (the "Assignment");

NOW, THEREFORE, with reference to the above recitals, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Assignment. Assignor hereby unconditionally and irrevocably transfers, assigns, and conveys to the Tort Trustee, to the fullest extent permissible under applicable law, Assignor's rights to pursue coverage litigation to seek a determination, to which Exide and the Tort Trustee agree to be bound, of whether the Policies, or any of them, provide coverage for any judgment that could be rendered on account of the Vernon Tort Claims asserted against Assignor in the Vernon Personal Injury Litigation (the "Insurance Coverage Determination").

Section 2. Acceptance. The Tort Trustee hereby accepts the Assignment herein with the understanding that (a) the Assignor makes no representations or warranties as to (i) the validity of this Assignment or of any claims or causes of action Assignor may or may not have against any Insurer or Policy or (ii) the enforceability of any rights assigned or sought to be assigned pursuant to this Assignment and (b) any such invalidity or unenforceability or any inability of the Tort Trustee to collect upon or as a result of this Assignment shall not affect Tort Trustee's covenants or obligations under the Term Sheet, this Assignment, or otherwise.

Section 3. Covenant of the Tort Trustee. The Tort Trustee hereby agrees and covenants that, as to the Policies, this Assignment fully complies with and completely fulfills Exide's obligation, pursuant to the Term Sheet, to irrevocably assign the right to bring insurance coverage litigation.

Section 4. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Assignor and Assignee and their respective successors and assigns.

Section 5. Counterparts; Facsimile or Electronic Signatures. This Agreement may be signed in one or more counterparts (whether original, facsimile, or electronic format), each of which shall be deemed an original, but all of which shall together constitute one and the same instrument.

Section 6. Governing Law. This Agreement shall be governed by, construed in accordance with, and enforced under the laws of the State of California, without regard to its principles of conflicts of laws.

Section 7. Conflicts. The parties agree that the sole purpose of this Agreement is to evidence the Assignment of the right to pursue the Insurance Coverage Determination from Assignor to the Tort Trustee. This Agreement shall not be interpreted or otherwise construed to assign any other right, title, or interest under the Policies, with respect to the Vernon Personal

**EXECUTION VERSION**

Injury Litigation or otherwise, or to alter, increase, or diminish, in any respect, the parties' rights, obligations, and liabilities set forth in the Term Sheet.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first written above.

**Assignor:**

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Exide Technologies

**Assignee:**

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Craig R. Jalbert, CIRA  
Trustee of the Vernon Tort Claims Trust