

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

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: Chapter 11
In re: :
: Case No. 13-11482 (KJC)
EXIDE TECHNOLOGIES, :
: :
Reorganized Debtor.¹ :
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NOTICE OF ISSUANCE OF SUBPOENA

PLEASE TAKE NOTICE that, pursuant to Rule 30 and Rule 45 of the Federal Rules of Civil Procedure (the "Federal Rules"), made applicable to this proceeding by Rules 7030, 9014 and 9016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Exide Technologies, the Reorganized Debtor in the above-captioned chapter 11 case ("Exide" or the "Reorganized Debtor"), by and through its undersigned counsel, intends to cause a subpoena (the "Subpoena") to appear to testify at a deposition to be issued upon the person most knowledgeable at Guggenheim Securities, LLC. A copy of the Subpoena is attached hereto as Exhibit 1.

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.

Dated: Wilmington, Delaware
December 14, 2017

SKADDEN, ARPS, SLATE, MEAGHER & FLOM
LLP

/s/ Jason M. Liberi

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

- and -

J. Eric Ivester
Four Times Square
New York, New York 10036-6522
Telephone: (212) 735-3000
Fax: (212) 735-2000

- and -

James J. Mazza, Jr.
155 N. Wacker Dr.
Chicago, Illinois 60606
Telephone: (312) 407-0700
Fax: (312) 407-0411

Counsel for the Reorganized Debtor

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT

District of Delaware

In re Exide Technologies

Debtor

(Complete if issued in an adversary proceeding)

Case No. 13-11482 (KJC)

Chapter 11

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO TESTIFY AT A DEPOSITION IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Guggenheim Securities LLC, attn: person most knowledgeable, c/o Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808, AND Guggenheim Securities LLC, attn: person most knowledgeable, c/o: General Counsel, 330 Madison Avenue, New York, NY 10017

(Name of person to whom the subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this bankruptcy case (or adversary proceeding). If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment: See attached Schedule

Table with 2 columns: PLACE (Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, NY 10036) and DATE AND TIME (January 18, 2018 at 9:00 a.m. (Eastern))

The deposition will be recorded by this method:

stenographic, sound and/or visual means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 12/14/2017

CLERK OF COURT

OR

/s/ Jason M. Liberi

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) Exide Technologies, who issues or requests this subpoena, are:

Jason M. Liberi, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, 920 N. King St., Wilmington, DE 19801, (302) 651-3000, jason.liberi@skadden.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) *Contempt.* The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A
DEFINITIONS

The following definitions shall apply. These definitions are to be construed in the broadest sense permitted by the Bankruptcy Rules and the Federal Rules.

A. “Application” means any application, including, without limitation, the CDTI Application, or similar request whether formal, informal, written, or oral, related to or regarding the Spanish IP Initiative, including, without limitation, the Spanish IP Funding.

B. “Authorized Projects” means the collaboratively developed list of potential IP Transactions that Dolin shall pursue for the benefit of Exide and the Trust (as supplemented by agreement of Exide, the Trustee and Dolin from time to time). For purposes of “Authorized Projects” only, IP Transactions shall mean the monetization of the IP Portfolio through any offset or similar transaction. For purposes of “Authorized Projects” only, IP Portfolio shall mean the Intellectual Property of Exide and its wholly or majority owned affiliates.

C. “CDTI Application” means the funding application Exide Technologies, S.L.U. submitted to the Centre for Development of Industrial Technology, titled, Financing Request for the Financing of R&D Business Projects, Individual Research and Investigation Project, and dated June 2017 on the cover page and July 2017 on subsequent pages.

D. “CDTI Grant” means any monetary grant from the Centre for the Development of Industrial Technology.

E. The term “Communication” means the transmittal of information in any form whatsoever, whether tangible or intangible.

F. The term “concerning” means reflecting, constituting, discussing, regarding, evidencing, contradicting, supporting, referring to, or otherwise relating to.

G. “Deloitte” means Deloitte Touche Tohmatsu Limited and its affiliates, officers, directors, employees, agents, legal counsel or any other person acting or purporting to act on its behalf.

H. The term “Document” includes, without limitation, any written, printed, typed, recorded, electronic or graphic matter of any kind and shall include the originals and each and all non-duplicate copies and all drafts thereof which presently are or have been in your actual or constructive possession, custody or control, or which are or have been otherwise available to you, or which are or have been known to you, including, but not limited to correspondence, letters, e-mails, text messages, chats, calculations, digests, bulletins, dockets, telegrams, teletypes, telexes, memoranda, statistical compilations, files, books, records, reports, analysis, evaluations, business plans, studies, legal pleadings, speeches, calendar or diary entries, travel records, expense records, promotional materials, cost records, books of account, pamphlets, manuals, guidelines, summaries, charts, handwritten notes, drafts, charges, lists, directives, orders, tabulations, minutes and records of meetings, telephone records, and presentations. The term “Documents” further includes data processing, computer printouts, photographs, film,

slides, audio recordings, video recordings, tapes, discs, or retrieval listings, together with programs and program documentation necessary to utilize or retrieve such information, and all other mechanical or electronic means of storing or recording information, as well as tape, film, or cassette sound or visual records, and reproductions or film impressions of any of the aforementioned writings. The term “Non-Duplicate Copy” means any copy, which is not a precise duplicate of its original, such as any copy with marks or notations of any type of description, which are not reflected on the original.

I. “Dolin” means Dolin International Trade & Capital LLC and its affiliates, officers, directors, employees, agents, legal counsel, or any other person acting or purporting to act on its behalf.

J. “Enrique Navarro Gil” means Enrique Navarro Gil, the President of MQGLOBALNET.

K. “Exide” means Exide Technologies and its affiliates, officers, directors, employees, agents, legal counsel, or any other person acting or purporting to act on its behalf.

L. “Francisco Javier Rosell Perez” means Francisco Javier Rosell Perez, the Director General de Empresas; Competitividad e Internacionalizacion, Castilla La Mancha.

M. “GUC Trust” means the Exide Creditors’ Liquidating Trust and its affiliates, officers, directors, employees, agents, legal counsel or any other person acting or purporting to act on its behalf.

N. “GUC Trust Agreement” means Exhibit 7.1 to the *Fourth Plan Supplement for the Plan of Reorganization of Exide Technologies* [D.I. 3567] filed on April 30, 2015.

O. “GUC Trust Settlement” means the settlement approved by the United States Bankruptcy Court for the District of Delaware by the *Order Under Bankruptcy Code Sections 105 and 363 and Bankruptcy Rule 9019 Authorizing and Approving the Debtor’s Entry Into Settlement Agreement with the Official Committee of Unsecured Creditors and Consenting Creditors of the Unofficial Noteholder’s Committee*, entered February 4, 2015 [D.I. 3093].

P. “Guggenheim” means Guggenheim Securities LLC and its affiliates, officers, directors, employees, agents, legal counsel, or any other person acting or purporting to act on its behalf.

Q. “Intellectual Property” means any of Exide’s intellectual property, including, without limitation, patents, copyrights, and trademarks.

R. “IP Transaction” has the meaning provided in the GUC Trust Settlement and the Plan.

S. “Li-Ion Research Center” means Exide’s existing facility in Azuqueca, Spain.

T. “MOD Contribution” means any contribution of value by defense contractors structured via an offset transaction that is facilitated by the Spanish Ministry of Defense.

U. “Motions” means, collectively, the Original Motion and Supplemental Motion.

V. “Original Motion” means the *Motion of Peter Kravitz, as the GUC Trust Trustee of the Exide Creditors’ Liquidating Trust, for Entry of an Order Clarifying and Enforcing the Terms of the Confirmation Order, Plan and GUC Settlement Agreement to Compel the Reorganized Debtor to Comply with the Terms Thereof* [D.I. 4809] filed on July 28, 2017.

W. The term “person” as used herein means any natural person or any business, legal, trust, or governmental entity or association, along with all others acting or purporting to act on such person’s behalf.

X. “Plan” means the *Fourth Amended Plan of Reorganization of Exide Technologies*, dated March 27, 2015 [D.I. 3409].

Y. “Regional Government Grant” means any monetary grant from any governmental organization in Castile La Mancha.

Z. “Services Agreement” means the services agreement entered into as of June 2015 by and between Exide Technologies, Peter Kravitz of Province Inc., as GUC Trust Trustee for and on behalf of the Exide Creditors’ Liquidating Trust, and Dolin International Trade & Capital LLC.

AA. “Spain Investment” means any subsidy provided by the Spanish Federal Government through its invest in Spain program.

BB. “Spanish IP Funding” means the potential funding, investment or assistance from any combination of CDTI Grant, Spain Investment, MOD Contributions, Regional Government Grant, or Spanish Loan that Dolin presented to Exide and the Trustee as a means to effectuate the Spanish IP Initiative.

CC. “Spanish IP Initiative” means the creation and development of an Exide lithium ion research and development center in Spain.

DD. “Spanish Loan” means any loan provided from the Spanish government.

EE. “Supplemental Motion” means *Supplemental Motion of Peter Kravitz, as the GUC Trust Trustee of the Exide Creditors’ Liquidating Trust, for Entry of an Order Clarifying and Enforcing the Terms of the Confirmation Order, Plan, and GUC Settlement Agreement and to Compel the Reorganized Debtor to Comply with the Terms Thereof* [D.I. 4860] filed on September 19, 2017.

FF. “Third Party Advisor” means any person that Exide considered or has or may have hired, retained, or otherwise employed or anticipates hiring, retaining, or otherwise

employing with regard to the Spanish IP Initiative, the Spanish IP Funding, and/or a preparation of an Application, including, without limitation, Deloitte.

GG. “Trustee” shall mean Peter Kravitz, in his capacity as trustee of the Exide Creditors’ Liquidating Trust created pursuant to the Plan and his affiliates, officers, directors, employees, agents, legal counsel or any other person acting or purporting to act on his behalf.

HH. “You” and “Your” as used herein means and includes Guggenheim.

INSTRUCTIONS

A. Pursuant to Rule 30(b)(6) and Rule 45 of the Federal Rules, made applicable in bankruptcy cases pursuant to Rules 7030, 9014, and 9016 of the Bankruptcy Rules, Guggenheim is directed to designate the person or persons most knowledgeable to testify on its behalf regarding the subject matters listed below (the “Topics of Examination”).

B. Guggenheim shall set forth, for each person designated, the matters on which the person will testify.

C. The person(s) so designated shall testify as to matters known or reasonably available to Guggenheim.

D. If Guggenheim designates more than one person to testify concerning the Topics for Examination, then the deposition of such additional designees shall proceed consecutively after the conclusion of each deposition unless otherwise agreed.

E. The word “all” shall also include “each of,” and vice versa. The word “any” shall be construed to mean “any and all” where the effect of such construction is to broaden the scope of the Topic of Examination.

F. “And” and “or” shall be construed to be either conjunctive or disjunctive as the context requires so that each Topic for Examination shall be construed broadly rather than narrowly.

G. The term “including” shall not be construed to limit the scope of any Topic of Examination.

H. Each Definition, Instruction and Topic of Examination herein shall be construed independently and not with reference to any other Definition, Instruction or Topic of Examination for the purposes of limitation.

I. Whenever necessary to bring within the scope of a Topic of Examination, documents or information that might otherwise be construed to be outside its scope (a) the use of a verb in any tense shall be construed as the use of that verb in all other tenses; (b) the use of a word in its singular form shall be deemed to include within its use the plural form, and vice versa; (c) the use of the masculine form of a noun or pronoun shall include the feminine form, and vice versa; and (d) the use of conjunctive or disjunctive, respectively, shall be construed as necessary to be inclusive rather than exclusive.

J. If the meaning of any term in any Topic of Examination herein is unclear to you, without waiver of the right to seek a full and complete response to the Topic of Examination, you shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Topic of Examination according to the assumed meaning.

TOPICS OF EXAMINATION

1. Your acts, efforts, consideration of, or the like with respect to IP Transactions.
2. Your acts, efforts, consideration of, or the like with respect to the Spanish IP Initiative.
3. Your understanding of the value of the Spanish IP Initiative or the Spanish IP Funding.
4. Your understanding of the viability of the Spanish IP Initiative or the Spanish IP Funding.
5. Your consideration of and/or efforts to effectuate IP Transactions, whether or not related to the Spanish IP Initiative.
6. Your consideration, review, valuation, and/or analysis of any use, sale, licensing, transfer, and/or other monetization of Intellectual Property, whether or not related to the Spanish IP Initiative.
7. Your consideration and understanding of Exide's efforts to develop any existing or potential manufacturing or research project or facility, including, without limitation, the Li-Ion Research Center.
8. Your consideration and understanding of Peter Kravitz's May 9, 2017 letter addressed to the Exide Technologies Board of Directors.
9. Your consideration and understanding of the GUC Trust June 1, 2017 presentation titled "Discussion Materials – Spain IP Monetization Project".
10. Your consideration and understanding of Dolin's June 5, 2017 letter addressed to Peter Kravitz and Brad Kalter.
11. Your consideration and understanding of the statements and positions in the Motions.
12. Your understanding of whether the Spanish IP Initiative is an IP Transaction as contemplated by the Services Agreement or the Plan.
13. Your understanding of Exide's hiring, retaining, or otherwise employing any Third Party Advisor.

14. Any Application, including any CDTI Application or other Application to any other federal, state, regional or local government, quasi government agency or administration.
15. Whether Exide suggested, directed, caused or otherwise was involved in the deferral or postponement of other potential IP Transactions in order to focus on the Spanish IP Initiative.
16. The parties' rights and obligations under the GUC Trust Settlement, Plan and Services Agreement with respect to IP Transactions.
17. The term, termination and/or expiration of the parties' rights and obligations under the GUC Trust Settlement, Plan and Services Agreement with respect to IP Transactions.
18. Your communications with the Trustee, Dolin, Exide, Enrique Navarro Gil, Francisco Javier Rosell Perez and/or others regarding these Topics Of Examination.