

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)
:
Reorganized Debtor.¹ :
: **Related Docket Nos. 3553, 3607, 3617, 3618, 3739, 4252**
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**REORGANIZED DEBTOR’S OMNIBUS REPLY IN SUPPORT OF THE
REORGANIZED DEBTOR’S OBJECTIONS TO CERTAIN INSUFFICIENT
DOCUMENTATION, NO LIABILITY, PREVIOUSLY DISCHARGED
AND MISCLASSIFIED FORMER EMPLOYEE CLAIMS**

The reorganized debtor in the above-captioned case (“Exide” or the “Reorganized Debtor”), files this reply in support of the Reorganized Debtor’s objections to certain insufficient documentation, no liability, previously discharged and misclassified former employee claims (the “Disputed Claims”), and states as follows:

INTRODUCTION

1. The Reorganized Debtor filed several omnibus objections (the “Objections”) seeking to disallow Disputed Claims² filed by former employees that (i) contained insufficient documentation to ascertain the validity of their Disputed Claims, (ii) were No Liability Claims, (iii) were Previously Discharged Claims, or (iv) were Misclassified Claims. In turn, the Reorganized Debtor received responses from five Claimants: (i) Rachel Clay (Claim No. 1774) (the “Clay Claim”) [Informal Response]; (ii) Jerry Coleman (Claim No. 1026) (the “Coleman

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 defined herein shall have the meaning ascribed to them in the Reorganized Debtor’s Fifteenth and Nineteenth Omnibus Objections [Docket No. 3553; 3739].

Claim”) [Docket No. 3607]; (iii) Michael Prude (Claim No. 2394) (the “Prude Claim”) [Docket No. 3618]; (iv) Reynaldo Rodriguez (Claim No. 1527) (the “Rodriguez Claim”) [Docket No. 3617]; and (v) Don F. Smith, Jr. (Claim No. 1401) (the “Smith Claim”) [Docket No. 4252].³

After carefully analyzing the responses, the Reorganized Debtor has confirmed that each Claimant asserts a Disputed Claim for alleged unpaid wages or severance. As discussed below, the Disputed Claims should either be disallowed as a No Liability Claim, a Previously Discharged Claim or reclassified as a non-priority general unsecured claim.

2. Accordingly, the Disputed Claims should be disallowed or reclassified pursuant to section 502(b)(1) of the Bankruptcy Code.

ARGUMENT

3. Sections 507(a)(4) and (5) of the Bankruptcy Code provide that certain claims for prepetition wages, salaries, commissions, vacation, sick leave, and employee benefit related contributions be accorded priority in payment in an amount not to exceed \$12,475⁴ for each individual employee to the extent such amounts accrued within 180 days of the Petition Date.

11 U.S.C. §§ 507(a)(4) and (5). In order to receive priority treatment, such claims must be earned within “180 days of the date of the filing of the petition.” *See, e.g., In re ADI*

Liquidation, Inc., 560 B.R. 105, 109 (Bankr. D. Del. 2016) (severance entitled to priority payment under § 507(a)(4) when earned within 180 days of the petition date); *In re Powermate*

³ The Reorganized Debtor objected to the Disputed Claims in the following Objections: (i) Clay Claim and Smith Claim – Reorganized Debtor’s (Substantive) Nineteenth Omnibus Objection [Docket No. 3739]; and (ii) Coleman Claim, Prude Claim, and Rodriguez Claim – Reorganized Debtor’s (Non-Substantive) Fifteenth Omnibus Objection [Docket No. 3553]. In the interests of judicial economy, the Reorganized Debtor filed one reply rather than multiple replies containing substantially identical arguments.

⁴ On April 1, 2013, the priority amounts under sections §§ 507(a)(4) and (5) of the Bankruptcy Code were increased from \$11,750 to \$12,475.

Holding Corp., 394 B.R. 765, 772 (Bankr. D. Del. 2008) (priority status for wages and benefits under §§ 507(a)(4) and (5) must be “earned” within 180 days before the date of filing.”).

4. In further support of this Reply, the Reorganized Debtor incorporates by reference the *Declaration of Barry Whipple in Support of Reorganized Debtor’s Omnibus Reply in Support of the Reorganized Debtor’s Objections to Certain Insufficient Documentation, No Liability, Previously Discharged and Misclassified Former Employee Claims* (the “Whipple Declaration”), attached hereto as Exhibit 1.

5. **The Clay Claim**. By interim order granted on June 11, 2013 [Docket No. 65], and Final Order granted on July 11, 2013 [Docket No. 319], this Court authorized the Debtor to pay, among other things, prepetition compensation, business expense reimbursement, benefits under medical and insurance benefit plans, and postpetition severance benefits for qualified employees (the “Wage Orders”). Specifically, the Wage Orders authorized Exide to pay prepetition severance obligations to former employees up to the amount of the \$12,475 priority cap under section 507(a)(4) of the Bankruptcy Code. [Docket No. 319 at ¶5.]

6. On or about October 23, 2013, Rachel Clay (“Clay”) filed the Clay Claim asserting an unsecured priority claim pursuant to section 507(a)(4) of the Bankruptcy Code for severance pay in the amount of \$51,411.77. Based on Exide’s books and records, Clay’s total severance claim was \$86,065.20. Of that amount, Clay received (i) \$662.04 and \$7,172.13 on April 30, 2013, (ii) \$7,172.13 on May 15, 2013, (iii) \$7,172.13 on May 31, 2013, and (iv) \$12,475.00 on July 18, 2013. *Whipple Declaration* ¶ 5. The payment made on July 18, 2013 reflects payment for the priority portion of Clay’s severance claim pursuant to section 507(a)(4) of the Bankruptcy Code, which was authorized pursuant to the Wage Orders. *Id.*

7. In her proof of claim, Clay acknowledges that she received the \$12,745 payment made by Exide pursuant to the Wage Orders and asserts that the remaining balance of her severance claim, \$51,411.77, remains outstanding as a priority claim pursuant to section 507(a)(4) of the Bankruptcy Code. *See* Clay Claim (“As you know, I have been paid \$34,653.43, including the one time court issued payment of \$12,475 in July. I am still owed \$51,411.77 per the plan below.”). Pursuant to the foregoing, Exide satisfied Clay’s priority claim under section 507(a)(4) of the Bankruptcy Code in full and the Clay Claim should be reclassified and allowed as a general unsecured non-priority claim in the amount of \$51,411.77. *Whipple Declaration* ¶ 6.

8. **The Coleman Claim.** On or about October 8, 2013, Jerry Coleman (“Coleman”) filed the Coleman Claim asserting an unsecured priority claim pursuant to section 507(a)(4) of the Bankruptcy Code for employee wages and other compensation in the amount of \$3,150. The Coleman Claim contains no documentation or other information establishing the basis for his asserted Claim. *See* Coleman Claim. In his response to the Objection, Coleman asserted that he worked for Exide for thirty years but did not receive any severance pay or other compensation. [See Docket No. 3607.] Coleman does not identify a basis for his entitlement to severance or identify when such claim accrued.

9. Coleman’s last date of employment at Exide was on or about March 31, 2009. *Whipple Declaration* ¶ 7-8. After a thorough review of Exide’s records, Exide has determined that Coleman has been paid in full for all wages owed on account of his employment with Exide and there are no amounts due Coleman in connection with his former employment. *Id.* Further, neither the Coleman Claim nor his response contains any information upon which Coleman

could state a valid basis for a claim against the Debtor – much less a priority claim under section 507(a)(4) of the Bankruptcy Code – since he last worked for Exide in 2009.

10. Pursuant to the foregoing, the Coleman Claim should be disallowed.

11. **The Prude Claim.** On or about October 30, 2013, Michael Prude (“Prude”) filed the Prude Claim asserting an unsecured priority claim pursuant to section 507(a)(4) of the Bankruptcy Code for employee wages and other compensation in the amount of \$12,475. In his response to the Objection, Prude does not identify a valid basis for his claim and acknowledges that he was last employed by Gould National Battery (“GNB”) in 1989. [See Docket No. 3618.]

12. After a thorough review of Exide’s records, Exide has determined that it has no liability to Prude on account of his former employment at GNB. *Whipple Declaration* ¶ 10-11. Exide does not have GNB payroll records dating back to 1989 and Exide has not have any record of employing Prude after it purchased GNB in 2000. *Id.* ¶ 11. Moreover, neither the Prude Claim nor his response contains any information upon which Prude could state a valid basis for a claim against the Debtor – much less a priority claim under section 507(a)(4) of the Bankruptcy Code – since he last worked GNB almost 30 years ago.

13. Further, based on the information contained in the Prude Claim and his response, any purported Claim was also previously released and discharged in the 2002 Chapter 11 Case. See Nineteenth Omnibus Objection ¶ 19 and *Bixler Declaration* in support thereof;

14. Pursuant to the foregoing, the Prude Claim should be disallowed.

15. **The Rodriguez Claim.** On or about October 18, 2013, Reynaldo Rodriguez (“Rodriguez”) filed the Rodriguez Claim asserting an unsecured priority claim pursuant to section 507(a)(4) of the Bankruptcy Code for employee wages and other compensation in the amount of \$20,400. The Rodriguez Claim contains no documentation or other information

establishing the basis for his asserted Claim. In his response to the Objection, Rodriguez claims that he signed a severance agreement with the Debtor, but that neither he nor Exide have been able to locate a copy of the purported agreement. [See Docket No. 3617.]

16. After a thorough review of Exide's records, Exide has determined that it has no liability to Rodriguez for severance payments related to his former employment with Exide. *Whipple Declaration* ¶ 13. Based on Exide's records, Rodriguez was employed by Exide until his employment terminated on or about December 2, 2004. *Id.* Since Rodriguez's employment terminated in 2004, the Rodriguez Claim cannot receive priority treatment under section 507(a)(4) of the Bankruptcy Code. Moreover, Exide has no record of Rodriguez entering into a severance agreement with Rodriguez in connection with the termination of his employment in 2004. *Id.* Nor does Rodriguez provide any other information which could support an allowed general unsecured claim in the amount of \$20,400. *Whipple Declaration* ¶ 13.

17. Pursuant to the foregoing, the Rodriguez Claim should be disallowed.

18. **The Smith Claim.** On or about October 15, 2013, Don F. Smith, Jr. ("Smith") filed the Smith Claim asserting an unsecured claim pursuant for "wages, salaries and compensation (income protection plan)" in the amount of \$6,292.77. In support of the Smith Claim, Smith attached a copy of the proof of claim he filed in the 2002 Chapter 11 Case for severance obligations incurred prior to the commencement of the 2002 bankruptcy petition. In his response to the Objection, Smith included a copy of an income protection agreement dated as of November 15, 2001. [See Docket No. 4252.]

19. After a thorough review of Exide's records, Exide has determined that it has no liability to Smith on account of Smith's former employment with Exide. *Whipple Declaration* ¶15. Based on the information contained in the Smith Claim and his response, the Smith Claim

was previously satisfied, discharged and released in full by order of the Court in the 2002 Chapter 11 Case. See Nineteenth Omnibus Objection ¶ 19 and *Bixler Declaration* in support thereof; *Whipple Declaration* ¶15. Further, the Smith Claim cannot be entitled to priority treatment under section 507(a)(4) of the Bankruptcy Code since he last worked for Exide in 2001.

20. Pursuant to the foregoing, the Smith Claim should be disallowed.

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WHEREFORE, the Reorganized Debtor respectfully requests that this Court enter an order (a) granting the relief requested in the Objections disallowing and expunging the Disputed Claims; and (b) granting to the Reorganized Debtor such other and further relief as this Court may deem just and proper.

Dated: October 18, 2018

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Special Conflicts Counsel for the Reorganized Debtor

Exhibit 1

(Whipple Declaration)

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)
 :
 Reorganized Debtor.¹ :
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DECLARATION OF BARRY WHIPPLE IN SUPPORT OF REORGANIZED DEBTOR’S OMNIBUS REPLY IN SUPPORT OF THE REORGANIZED DEBTOR’S OBJECTIONS TO CERTAIN INSUFFICIENT DOCUMENTATION, NO LIABILITY, PREVIOUSLY DISCHARGED AND MISCLASSIFIED FORMER EMPLOYEE CLAIMS

1. My name is Barry Whipple. I am over the age of 18 and competent to testify. I am the Senior Director of Finance in the Shared Services department at Exide Technologies (“Exide” or the “Reorganized Debtor”). I submit this declaration in support of the Reorganized Debtor’s Omnibus Reply in Support of the Reorganized Debtor’s Objections to Certain Insufficient Documentation, No Liability, Previously Discharged and Misclassified Employee Claims (the “Reply”). I have read and am familiar with the contents of the Reply.²

2. I have held my current position with Exide since April 1, 2006. As a result of my time with Exide, my review of relevant documents, and my discussions with other members of the Shared Services department at Exide, I am familiar with all aspects of Exide’s payroll processing and recordkeeping. Except as otherwise noted, I have personal knowledge of the matters set forth herein and all facts set forth in this Declaration are based on my personal

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

knowledge, my discussions with other members of Exide's payroll department, and my review of relevant documents. I am authorized to submit this Declaration on behalf of Exide and if called to testify as a witness in this matter, I could and would testify competently to the facts set forth herein.

3. Upon information and belief, Exide's books and records accurately reflect, among other things, its liabilities (including amounts thereof) to its creditors.

4. I have reviewed the Objections to each Disputed Claim and am familiar with the information contained therein and the exhibits annexed thereto.

A. Rachel Clay

5. To the best of my information and belief, and after a thorough and reasonable review of Exide's books and records and the Clay Claim, I have determined that Clay's total severance claim was \$86,065.20. Of that amount, Exide paid Clay (i) \$662.04 and \$7,172.13 on April 30, 2013, (ii) \$7,172.13 on May 15, 2013, (iii) \$7,172.13 on May 31, 2013, and (iv) \$12,475.00 on July 18, 2013. The payment made on July 18, 2013 reflects payment for the priority portion of Clay's severance claim pursuant to section 507(a)(4) of the Bankruptcy Code, which was authorized pursuant to the Wage Orders. [Docket No. 319.]

6. Pursuant to the foregoing, the Clay Claim should be reclassified as a general unsecured nonpriority claim in the amount of \$51,411.77.

B. Jerry Coleman

7. To the best of my information and belief, and after a thorough and reasonable review of Exide's books and records and the Coleman Claim, I have determined that Coleman has been paid in full for all wages owed on account of his employment with Exide. In the Coleman Claim, Coleman asserts an unsecured priority claim for employee wages and severance

in the amount of \$3,150. Neither the Coleman Claim nor his response to the Objection contain any documentation supporting his claim.

8. Coleman's employment with Exide terminated on or about March 31, 2009. Exide's books and records do not reflect any amounts due to Coleman on account of his former employment with Exide for either wages or severance. This is consistent with Exide's standard procedure of paying its former employees any outstanding wages promptly after termination of their employment at Exide.

9. Pursuant to the foregoing, the Coleman Claim should be disallowed in its entirety.

C. Michael Prude

10. To the best of my information and belief, and after a thorough and reasonable review of Exide's books and records and the Prude Claim, I have determined that Exide has no liability to Prude on account of his former employment with Gould National Battery ("GNB"). In the Prude Claim, Prude asserts an unsecured priority claim for employee wages and other compensation in the amount of \$12,475. Although the Prude Claim contains no documentation supporting his claim, Prude asserts in response to the Objection that he worked for GNB and quit in 1989.

11. Exide does not have GNB payroll records dating back to 1989 and Exide has not have any record of employing Prude after it purchased GNB in 2000. The Prude Claim also contains no documentation or other information establishing a factual basis for Prude's assertion that he is owed wages by Exide. Accordingly, Exide has no liability to Prude on account of his former employment at GNB.

12. Pursuant to the foregoing, the Prude Claim should be disallowed in its entirety.

D. Reynaldo Rodriguez

13. To the best of my information and belief, and after a thorough and reasonable review of Exide's books and records and the Rodriguez Claim, I have determined that Exide has no liability to Rodriguez for severance payments related to his former employment with Exide. In the Rodriguez Claim, Rodriguez asserts an unsecured priority claim for unpaid severance in the amount of \$20,400. Based on Exide's records, Rodriguez was employed by the Debtor until his employment terminated on or about December 2, 2004. Exide has no record of entering into a severance agreement with Rodriguez in connection with the termination of his employment in 2004.

14. Pursuant to the foregoing, the Rodriguez Claim should be disallowed in its entirety.

E. Don F. Smith, Jr.

15. To the best of my information and belief, and after a thorough and reasonable review of Exide's books and records and the Smith Claim, I have determined that Exide has no liability to Smith on account of his former employment with Exide. In the Smith Claim, Smith asserts an unsecured claim pursuant for "wages, salaries and compensation (income protection plan)" in the amount of \$6,292.77. In support of the Smith Claim, Smith attached a copy of the proof of claim he filed in the 2002 Chapter 11 Case for severance obligations incurred prior to the commencement of the 2002 bankruptcy petition. In his response to the Objection, Smith included a copy of an income protection agreement dated as of November 15, 2001 in support of the Smith Claim. To my knowledge, the Smith Claim was previously satisfied, discharged and released in full by order of the Court in the 2002 Chapter 11 Case.

16. Pursuant to the foregoing, the Smith Claim should be disallowed in its entirety.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing information is true and correct to the best of my knowledge, information and belief.

Executed on October 1, 2018


Barry Whipple