

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	:	Re: D.I. 5106, 5112

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**ORDER PURSUANT TO SECTION 105(A) OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULE 9019
APPROVING THE SETTLEMENT AGREEMENT BETWEEN EXIDE
TECHNOLOGIES AND THE EXIDE CREDITORS' LIQUIDATING TRUST**

Upon the motion (the "Motion")² of Peter Kravitz, as the duly appointed Trustee (the "Trustee") of the Exide Creditors' Liquidating Trust (the "Trust"), for entry of an order (this "Order"), pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019: (i) approving the Settlement Agreement among the Parties, which is attached hereto as **Exhibit 1**; and (ii) granting the Trustee such other and further relief as the Court deems just and proper, all as set forth more fully in the Motion; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of Reorganized Exide's estate, its creditors and other parties in interest; and the Court having found that the Trustee's notice of the Motion and opportunity for a hearing on the Motion was appropriate and no other

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 used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.


notice need be provided; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion and at any hearing on the Motion, establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED:

1. The Motion is GRANTED as set forth herein.
2. The Settlement Agreement attached hereto as Exhibit 1 is hereby approved, and the terms, conditions and provisions of the Settlement Agreement are incorporated in this Order by reference as if fully set forth herein.
3. The Parties are authorized to execute the Settlement Agreement and perform pursuant to its terms.
4. The Parties are authorized to take any and all actions, including, without limitation, execution and delivery of documents, certificates, instruments or other papers, each as may be reasonably necessary to perform their obligations arising under the Settlement Agreement.
5. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.
6. The Trustee is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

7. The Court shall retain jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Date: Dec 20, 2018
Wilmington, Delaware



THE HONORABLE KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Settlement Agreement

SETTLEMENT AGREEMENT

This Agreement (the "Agreement") is made and entered into as of this November ____, 2018, by Exide Technologies ("Reorganized Exide") and the Exide Creditors' Liquidating Trust (the "Trust"), by Peter Kravitz, as the duly appointed Trustee (the "Trustee") of the Trust. Reorganized Exide and the Trust each are a "Party" to this Agreement and collectively are the "Parties".

RECITALS

WHEREAS, on June 10, 2013, Exide Technologies filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, on February 4, 2015, the Bankruptcy Court entered an order (D.I. 3093) approving the *Term Sheet for Settlement Among Company, the UNC and the Committee* dated January 28, 2015 (D.I. 3093-1) (the "GUC Settlement Agreement");

WHEREAS, the Bankruptcy Court confirmed the *Fourth Amended Plan of Reorganization of Exide Technologies* (D.I. 3409) (the "Plan") by Order entered on March 27, 2015 (D.I. 3423) (the "Confirmation Order"), and the Plan became effective on April 30, 2015 (the "Plan Effective Date");

WHEREAS, pursuant to Article VII of the Plan and paragraphs 37-39 of the Confirmation Order, the Trust was formed, and Peter Kravitz was appointed the Trustee of the Trust pursuant to the terms and conditions of the Exide Creditors' Liquidating Trust Agreement (D.I. 3567-1) (the "GUC Trust Agreement") between Exide Technologies and the Trustee;

WHEREAS, pursuant to Article VII, Section 7.3 of the Plan and paragraph 39 of the Confirmation Order, certain assets were transferred to the Trust, including the GUC Trust IP Transaction Proceeds described in paragraph 1.2.16 of the GUC Trust Agreement, the GUC Trust LME Pricing Litigation Assets described in paragraph 1.2.17 of the GUC Trust Agreement, and GUC Trust Preference Actions described in paragraph 1.2.18 of the GUC Trust Agreement;



[REDACTED]

[REDACTED]

WHEREAS, the Trustee brought GUC Trust Preference Actions against 403 defendants, which have all been fully litigated and from which a total of \$1,997,629.63 was recovered in 207 of those matters, providing the Trust with a total of approximately \$1,096,662.17 of Net Proceeds (net of fees, costs and other expenses) from the monetization of the GUC Trust Preference Actions;

WHEREAS, the Trust has indicated to Reorganized Exide that it believes that Reorganized Exide has not provided "commercially reasonable" support and assistance to the Trust in the Trustee's pursuit of monetizing the GUC Trust Preference Actions as required by Section 3.11(b) of the GUC Trust Agreement (the "Preference Action Dispute");

WHEREAS, Reorganized Exide denies the Trust's allegations concerning the Preference Action Dispute;

WHEREAS, the Trust has other outstanding disputes with Reorganized Exide related to the Plan and its implementation, including but not limited to the facts set forth in the *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 to Compel the Reorganized Debtor to Comply with the Terms Thereof* (D.I. 4859) (the "IP Transaction Proceeds Dispute");

[REDACTED]

WHEREAS, after a review and investigation of the facts and circumstances, the Parties have agreed to a fair, reasonable, and good faith resolution of matters concerning Reorganized Exide's cooperation with the Trust and other outstanding disputes;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed by and among the Parties:

AGREEMENT

1. Payment of Additional GUC Trust Preference Actions Proceeds. By operation of this paragraph, Reorganized Exide shall, pursuant to and as consideration for this Agreement and to settle the Preference Action Dispute, the IP Transaction Proceeds Dispute and any and all other disputes between the Trust and Reorganized Exide, collectively pay in good funds without demand or set off a total of three million two-hundred thousand U.S. dollars (\$3,200,000) (the "Settlement Amount"), by wire transfer to the Trustee on behalf of the Trust, in three installments, as follows:

- a. Two-hundred thousand U.S. dollars (\$200,000) within five (5) business days after the Agreement Effective Date (defined below);
- b. One million, five-hundred thousand U.S. dollars (\$1,500,000), on the day that is twenty-four (24) months after the Agreement Effective Date; and
- c. One million, five-hundred thousand U.S. dollars (\$1,500,000), on the day that is thirty-six (36) months after the Agreement Effective Date.

The three aforesaid installment payments, in paragraph 1.a – 1.c herein above, shall be collectively defined and referred to herein as the "Payments."

2. Release of Claims.

- a. Trust Release of Claims. Upon the Agreement Effective Date, by operation of this paragraph (for the avoidance of doubt, without the need for any further steps or actions to be taken by any Party), the Trustee, on behalf of the Trust and its beneficiaries, and in consideration of the indefeasible Payments described in paragraph 1, above, and the release in paragraph 2.b, below, hereby irrevocably and completely releases, acquits, and forever discharges Reorganized Exide and all of its present and former, direct and indirect, employees, representatives, officers, directors, divisions, parents, subsidiaries, affiliates, attorneys, assigns, predecessors, and successors in interest for any and all claims, causes of action, debts, demands, liabilities, obligations or damages including, without limitation, for: (i) any obligations of Reorganized Exide pursuant to Sections 3.11(a)-(d) of the GUC Trust Agreement, including but not limited to any obligation to "use commercially reasonable efforts to cooperate with the Trustee in connection with investigating and prosecuting GUC Trust Preference Actions" as set forth in Section 3.11(b) of the GUC Trust Agreement; (ii) any obligations of Reorganized Exide regarding any of the other GUC Trust Assets as described in Section 1.2.12 of the GUC Trust Agreement, including but not limited to any obligations of Reorganized Exide related to the GUC Trust IP Transaction Proceeds as described in

1.2.16 of the GUC Trust Agreement, the IP Transaction Proceeds Dispute, or any GUC Trust Causes of Action which are not GUC Trust Preference Actions as described in 1.2.15 of the GUC Trust Agreement; and (iii) any obligations of Reorganized Exide due to the Trust in accordance with the Plan, the Confirmation Order, and the GUC Settlement Agreement (the claims described and released in this paragraph 2.a, the "Trust Released Claims"); provided, however, that the Trustee's release of the Trust Released Claims shall not apply to any claims seeking to enforce, or for damages for breach of, this Agreement. The Trustee acknowledges that, by executing this Agreement, and for the consideration received hereunder, it is his intention upon the Agreement Effective Date to release, and he is releasing, all Trust Released Claims, even those of which he is presently unaware and unsuspecting. In furtherance of this intention, upon the Agreement Effective Date, the Trustee, on behalf of the Trust, expressly waives and relinquishes, to the fullest extent permitted by law, any rights or benefits conferred by the provisions of California Civil Code § 1542 or any similar law. California Civil Code § 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

- b. Reorganized Exide Release of Claims. Upon the Agreement Effective Date, by operation of this paragraph (for the avoidance of doubt, without the need for any further steps or actions to be taken by any Party), Reorganized Exide, on behalf of itself, affiliates, successors and assigns, and in consideration of the release described in paragraph 2.a, above, hereby irrevocably and completely releases, acquits, and forever discharges the Trust and the Trustee and all of their present and former, direct and indirect, employees, representatives, officers, directors, divisions, parents, subsidiaries, affiliates, attorneys, assigns, predecessors, and successors in interest for any and all claims, causes of action, debts, demands, liabilities, obligations or damages including, without limitation, for: (i) any obligations of the Trust or Trustee pursuant to Sections 3.11(a)-(d) of the GUC Trust Agreement; (ii) any obligations of the Trust or Trustee regarding any of the other GUC Trust Assets as described in Section 1.2.12 of the GUC Trust Agreement, including but not limited to any obligations of the Trust or Trustee related to the GUC Trust IP Transaction Proceeds as described in 1.2.16 of the GUC Trust Agreement, the IP Transaction Proceeds Dispute, or any GUC Trust Causes of Action which are not GUC Trust Preference Actions as described in 1.2.15 of the

GUC Trust Agreement; and (iii) any obligations of the Trust or Trustee due to Reorganized Exide in accordance with the Plan, the Confirmation Order, and the GUC Settlement Agreement (the claims described and released in this paragraph 2.b, the “Reorganized Exide Released Claims”); provided, however, that Reorganized Exide’s release of the Reorganized Exide Released Claims shall not apply to any claims seeking to enforce, or for damages for breach of, this Agreement. Reorganized Exide acknowledges that, by executing this Agreement, and for the consideration received hereunder, it is its intention upon the Agreement Effective Date to release, and it is releasing, all Reorganized Exide Released Claims, even those of which it is presently unaware and unsuspecting. In furtherance of this intention, upon the Agreement Effective Date, Reorganized Exide expressly waives and relinquishes, to the fullest extent permitted by law, any rights or benefits conferred by the provisions of California Civil Code § 1542 or any similar law. California Civil Code § 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

3. Representations and Warranties. The Parties hereby represent and warrant as follows:
- a. Investigation of Facts. The Parties have made such investigation of the facts pertaining to this settlement and this Agreement and all matters pertaining thereto as each deems necessary.
 - b. Independent Legal Advice. The Parties have received independent legal advice from their attorneys with respect to the advisability of making the settlement provided for herein, as well as the advisability of executing this Agreement.
 - c. Reliance. In entering into this Agreement, the Parties do not rely on any statement, representation, or promise of any person or entity whatsoever except as expressly set forth in this Agreement.
 - d. Authority. The Trustee and Reorganized Exide, respectively, are empowered to execute this Agreement and to bind Reorganized Exide and the Trust, respectively, in accordance with the terms of this Agreement, subject to the approval of the Bankruptcy Court (as defined in the Plan).

4. Agreement Effective Date. This Agreement shall become effective (the "Agreement Effective Date") on the date upon which the order approving this Agreement becomes a final order of the Bankruptcy Court which has not been reversed, modified or stayed, is in full force and effect, and as to which order (or any reversal, modification, or stay thereof) (a) the time to appeal, seek certiorari, or request reargument or further review or rehearing has expired and no appeal, petition for certiorari, or request for reargument or further review or rehearing has been timely filed, or (b) any appeal that has been or may be taken or any petition for certiorari or request for reargument or further review or rehearing that has been or may be filed has been resolved by the highest court to which the order was appealed, from which certiorari was sought, or to which the request was made, and no further appeal or petition for certiorari or request for reargument or further review or rehearing has been or can be taken or granted; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Federal Rules of Bankruptcy Procedure, may be filed relating to such order shall not prevent such order from being a final order.

5. Additional Amounts; Acceleration. Upon (a) Reorganized Exide's failure to satisfy its contractual obligation to make any of the Payments set forth in paragraph 1 of this Agreement on the schedule required by paragraph 1 of this Agreement AND (b) (i) Reorganized Exide's receipt of written notice from the Trust in accordance with paragraph 16 of this Agreement identifying such failure of Reorganized Exide to make any of the Payments set forth in paragraph 1 of this Agreement on the schedule required by paragraph 1 of this Agreement and Reorganized Exide's failure within ten (10) business days of receipt of such written notice from the Trust to cure any Reorganized Exide failure to make any of the Payments set forth in paragraph 1 of this Agreement on the schedule required by paragraph 1 of this Agreement by making such payment to the Trust OR (ii) a filing of a proof of claim against Reorganized Exide by the Trust in any subsequent bankruptcy proceeding of Reorganized Exide commenced after the Agreement Effective Date, THEN, without any further action by the Parties, (x) an additional payment in the amount of two-hundred and fifty thousand U.S. dollars (\$250,000) (the "Additional Payment") shall become immediately due and payable from Reorganized Exide to the Trust (which shall be in addition to the Settlement Amount set forth in paragraph 1 of this Agreement), and (y) all remaining Payments set forth in paragraph 1 of this Agreement that have not yet been paid from Reorganized Exide to the Trust shall be accelerated and shall become immediately due and payable to the Trust. The Parties agree that the Additional Payment is intended to be, and is, purely compensatory in nature. The Additional Payment is intended to, among other things, (i) compensate the beneficiaries, among others, of the Trust for any and all harm caused by a delay of their distributions arising from Reorganized Exide's failure to timely pay all Settlement Amounts, and (ii) reimburse the Trust for any and all additional administrative costs caused by the additional unknown and unmeasurable delays that may be caused by Reorganized Exide's failure to timely pay all Settlement Amounts. The Parties hereto agree that the Costs in Paragraph 6 below are not part of and are in addition to the Additional Payment.

6. Costs. The Parties shall bear their own costs, expenses, and attorneys' fees incurred in connection with this Agreement. Notwithstanding the foregoing, in the event that any suit or action is instituted for damages for breach of, or to enforce, this Agreement after the Agreement Effective Date, including without limitation to enforce any provision in this Agreement or to obtain or enforce obligations under this Agreement in a bankruptcy, insolvency or similar proceeding, the prevailing Party in such dispute shall be entitled to recover from the losing Party all reasonable fees, costs and expenses of enforcing any right of such prevailing Party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals; provided, however, that if the Trust institutes a suit, claim or action after the ten (10) business day cure period set forth in paragraph 5 of this Agreement to collect from Reorganized Exide and/or to compel Reorganized Exide to make payment of the Settlement Amount, the Additional Payment or any additional amounts or any portion thereof at that time due and owing from Reorganized Exide to the Trust under this Agreement, then the Trust shall be entitled to recover from Reorganized Exide all reasonable fees, costs and expenses of enforcing such right to payment under this Agreement, including without limitation, reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

7. Binding Effect. This Agreement is binding upon and shall inure to the benefit of each of the Parties hereto, and their respective present and former, direct and indirect, employees, representatives, officers, directors, divisions, parents, subsidiaries, affiliates, attorneys, assigns, predecessors, and successors in interest. Each Party agrees to do everything reasonably necessary to effectuate the performance of, and uphold the validity and enforceability of, this Agreement. The Parties and their counsel, on behalf of the Parties, agree not to contest the validity of this Agreement, including the releases contained herein, in any civil, administrative, government, or other proceeding.

8. Governing Law. This Agreement shall be deemed to have been executed and delivered in the State of Delaware, and shall be construed and enforced in accordance with, and governed by, the laws of Delaware (except that any conflict of laws rule or provision of Delaware shall not apply).

9. Consent to Jurisdiction; Enforcement; Waiver of Jury Trial. Any motions, applications, claims or causes of action arising from any disputes relating to this Agreement shall be brought in the United States Bankruptcy Court for the District of Delaware, or, to the extent that that Court lacks federal subject matter jurisdiction, in an appropriate court of the State of Delaware. Each Party hereby consents to personal jurisdiction, waives any objection as to jurisdiction or venue, and agrees not to assert any defense based on lack of jurisdiction or venue in those courts. Each Party hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any proceedings relating to this Agreement or any performance of, or failure to perform, any obligation hereunder.

10. Entire Agreement. This Agreement contains the entire, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and is not subject to any condition not provided for herein. This Agreement supersedes any prior and contemporaneous oral and written agreements and communications between and among the Parties regarding the subject matter hereof; provided, however, that this Agreement does not supersede, but is in addition to, [REDACTED]

11. Waiver and Amendment; Preservation of Remedies. This Agreement may be amended only by an agreement in writing executed by all of the Parties hereto. The failure by any Party hereto to insist upon strict performance of any of the terms or conditions of this Agreement shall not be deemed a waiver of any of the rights or remedies that such Party may have, and shall not be deemed a waiver of any subsequent breach or default. To be effective, any waiver with regard to this Agreement must be in writing and signed by the Party granting the waiver, and any such waiver shall apply only to the matter or instance specifically waived.

12. No Strict Construction. The Parties have participated jointly in the negotiation, drafting and editing of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by all Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

13. Severability. If any provision of this Agreement, or application of such provision to any person or circumstance, shall be held invalid by a court of competent jurisdiction, the remainder of this Agreement, or the application of such provision to persons or circumstances other than to those as to which it is held invalid, shall not be affected thereby unless to do so would destroy the essential purpose of this Agreement.

14. Successors and Assigns. A Party's rights and obligations under this Agreement may not be assigned without the prior written consent of the other Parties. All of the provisions of this Agreement shall be binding upon and inure to the benefit of each of the Parties and their respective successors and permitted assigns.

15. Headings. The headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

16. Notice. All notices hereunder shall be in writing. Any notice hereunder shall be deemed effective the day after it is sent for next-day delivery by any air express courier company and addressed to the intended recipient(s) as set forth below with a copy also sent concurrently by e-mail to those of the addressees set forth below for whom an e-mail address is provided:

For the Trustee and the Trust:

Peter Kravitz, Trustee
5915 Edmond Street, Suite 102
Las Vegas, NV 89118

With a copy to: Eric D. Schwartz, Esq. (eschwartz@mnat.com)
1201 North Market Street, Suite 1600
Wilmington, Delaware 19801
Telephone: (302) 658-9200

For the Reorganized Exide:

Brad S. Kalter, Esq. (brad.kalter@exide.com)
Exide Technologies
EVP, General Counsel and Corporate Secretary
13000 Deerfield Parkway, Bldg 100W
Milton, Georgia 30004-8532
Telephone: (678) 566-9048

With a copy to: J. Eric Ivester, Esq. (eric.ivester@skadden.com)
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036-6522
Telephone: (212) 735-3111

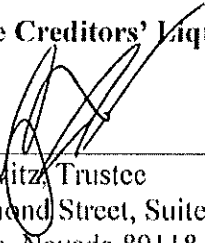
Any Party may change the address to which notices hereunder are to be delivered to such Party by giving notice in the manner herein set forth.

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17. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered (including without limitation by e-mail) at least one such counterpart, each counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute one Agreement which shall be binding upon and effective in accordance with its terms as to all Parties.

AGREED TO AND ACCEPTED AS OF THE AGREEMENT EFFECTIVE DATE:

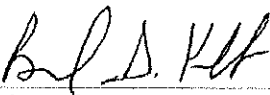
On behalf of the Exide Creditors' Liquidating Trust



Peter Kravitz, Trustee
5915 Edmond Street, Suite 102
Las Vegas, Nevada 89118

Date: _____, 2018

On behalf of Reorganized Exide



Brad S. Kalter
Exide Technologies
EVP, General Counsel and Corporate Secretary
13000 Deerfield Parkway, Bldg 100W
Milton, Georgia 30004-8532

Date: December 3, 2018