

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. 3573, 5082
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**REORGANIZED DEBTOR’S SUPPLEMENTAL RESPONSE IN SUPPORT
OF THE REORGANIZED DEBTOR’S OBJECTION TO THE
CLAIM OF WILLIE JONES, JR. (CLAIM NO. 911)**

The reorganized debtor in the above-captioned case (“Exide” or the “Reorganized Debtor”), pursuant to the Court’s direction at the November 29, 2018 hearing (“November 29 Hearing”) on the Reorganized Debtor’s objection to Claim No. 911 (“Claim”) filed by Willie Jones, Jr. (“Jones”), states as follows:

INTRODUCTION

1. Jones asserts in his Claim that he is entitled to receive retirement benefits from the Exide Technologies Retirement Plan (“Pension Plan”)² in the amount of \$666.05 per month. The Reorganized Debtor and the administrator of the Plan, the Exide Technologies Benefits Administration Committee (“Benefits Committee”), have fully investigated the Claim and determined that Jones is entitled to receive reduced monthly benefits in the amount of \$411.73 based on his age and vested years of service as of the date of his retirement. In addition, the Reorganized Debtor asserts that the Claim is not enforceable against the Debtor or property of

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 A copy of the relevant pages of the Pension Plan is attached hereto as Exhibit 1.

the Debtor and that denial of the Claim would not impair or alter any purported claim that Jones may have against the Pension Plan.

2. At the November 29, 2018 Hearing, the Court requested that Exide provide additional support for its position that denial of the Claim would not impair Jones' rights, if any, against the Pension Plan. Consistent with the Court's direction, the Reorganized Debtor submits that the proper defendant of any purported claim brought for the wrongful denial of benefits under Employee Retirement Income Security Act of 1974 ("ERISA") is limited to the Pension Plan itself or the Benefits Committee. *See e.g., Graden v. Conexant Sys., Inc.*, 496 F.3d 291, 301 (3d Cir. 2007) (citing *Chapman v. ChoiceCare Long Island Term Disability Plan*, 288 F.3d 506, 509-10 (2d Cir. 2002)). The Debtor is not the proper party to any claim for wrongful denial of benefits under ERISA since it is not responsible for administering benefits or determining eligibility under the Plan. Accordingly, the Reorganized Debtor's objection should be granted because neither the Debtor nor Reorganized Debtor are liable for Claim under the applicable provisions of ERISA.

3. In support of this supplemental response, Exide submits the *Declaration of Wendy Henderson in Support of Reorganized Debtor's Supplemental Response in Support of the Reorganized Debtor's Objection to the Claim of Willie Jones, Jr. (Claim No. 911)* attached hereto as Exhibit 2 (hereinafter, "Henderson Decl.").

BACKGROUND

A. The Pension Plan and Plan Administrator

4. The Pension Plan is the sole surviving defined benefit pension plan sponsored by Exide for US-based employees. (*Henderson Decl.* at ¶2.) The Pension Plan covers virtually all of Exide's active and former employees who were hired prior to 2006, including active former

employees of Gould National Battery, which was purchased by Exide in 2000, and hourly union employees covered by certain collective bargaining agreements. The Pension Plan is closed to new entrants, and benefits under the Pension Plan are frozen for all participants. (*Henderson Decl.* at ¶5.)

5. The Benefits Committee, and not the Debtor or Reorganized Debtor, is the “plan administrator” of the Pension Plan as that term is defined under § 3(16)(A) of ERISA. (Ex. 1 at § 6.1; *Henderson Decl.* at ¶3.) The Benefits Committee, which is appointed by Exide’s Board of Directors, “is delegated the overall responsibility for the amendment, termination, administration and operation of the Plan other than with regard to Plan investments.” *Id.*

6. Section 6.5 of the Pension Plan, which sets forth the duties of the Benefits Committee, provides in part:

The Benefits Committee on behalf of the Participants and beneficiaries of the Plan will enforce the Plan and the Trust Agreement in accordance with their terms and will have all powers (including complete and absolute discretion in determining all matters within its jurisdiction) necessary to accomplish that purpose, including, but not by way of limitation, the following:

(a) To issue rules and regulations necessary for the proper conduct and administration of the Plan and to change, alter, or amend such rules and regulations;

(b) To construe the Plan and Trust Agreement;

(c) To determine all questions arising in the administration of the Plan, including those relating to the eligibility of persons to become Participants and the rights of Participants and beneficiaries, and its decision thereon will be final and binding upon all persons hereunder;

(d) To compute and certify to the Trustee the amount and kind of benefits payable to Participants or beneficiaries;

(e) To authorize all disbursements from the Retirement Fund in accordance with the provisions of the Plan;

(f) To hear, review and determine claims for benefits;

(See Ex. 1 at § 6.5.)

B. Jones' Claim for Benefits

7. Jones is a retired former employee of Exide. See *Declaration of Joseph Wickham in Support of Reorganized Debtor's Omnibus Reply in Support of the Reorganized Debtor's Objections to Certain Insufficient Documentation and No Liability Employee or Retiree Claims* at ¶9 (hereinafter, "*Wickham Decl.*") [Docket No. 5082-2]. Prior to his retirement, Jones was a member of the International Union, United Automobile, Aerospace and Agriculture International Workers of America, Local Union 1532 ("Union") and was covered by a collective bargaining agreement between the Union and Exide. (*Id.*) In June 2006, the Shreveport facility where Jones was employed was permanently closed. (*Id.*) Prior to closing the Shreveport facility, early retirement was not available to Jones under the Pension Plan based on his age and years of service. (*Id.* at ¶10.)

8. In connection with the facility closure, the Union and Exide entered into a Closing Agreement, one purpose of which was to set forth the parties' understanding of the benefits to be provided members of the Union as a result of Exide's decision to permanently close the Shreveport facility. (*Wickham Decl.* at ¶9.) Pursuant to the Closing Agreement, Exide agreed to the Union's request that Exide modify the Pension Plan to enact early retirement for associates who were age 55 with 10 years of vesting service as of June 22, 2006. (*Id.*) This early retirement provision permitted associates who were age 55 with 10 years of vesting service prior to June 22, 2006 to be eligible for reduced retirement benefits. (*Id.*) Neither the Pension Plan nor the Closing Agreement

provided for unreduced retirement benefits based on Jones' age and years of service. (*Id.*)³ Consistent with its obligations, the Pension Plan made monthly retiree benefits to Jones in the amount of \$411.73. (*Henderson Decl.* at ¶7.)⁴ All former employees that were eligible for and elected to receive early retirement benefits in connection with the closure of Shreveport facility, including Jones, received reduced monthly retiree benefits calculated in a manner consistent with the Pension Plan. (*Id.* at ¶8.)

9. In his claim, Jones asserts that that the early retirement provision in the Closing Agreement provided permitted associates who were age 55 with 10 years of vesting service prior to June 22, 2006 to be eligible for *unreduced* retirement benefits. (*Claim* at pp. 1-3.) Under his interpretation of the Closing Agreement, Jones alleges that he is entitled to unreduced early retirement benefits from the Pension Plan in the amount of \$606.05 per month. (*Id.*)

10. Based on the exhibits attached to the Claim, Jones asserts a claim under ERISA for his asserted additional monthly benefits. Importantly, the filed Claim includes: (i) a letter from Jones' former counsel, J. Ransdell Keene, dated September 4, 2008 stating that the "statute applicable to you[r] case is Title 29, United States, Section 1132(e)(1)" (the "Keene Letter"); and (ii) a draft petition that purportedly asserts a claim under ERISA against the Pension Plan for benefits in the amount of \$666.05 per month (the "Draft Petition"). A copy of the Keen Letter and the Draft Petition is attached hereto as Exhibit 3.

³ See also October 3, 2008 letter from Hermaine Reize, Manager of Exide Retirement Plans, to Ms. Laura Shoemake, US Department of Labor, regarding Jones' early retirement calculations (the "Reize Letter"). The Reize Letter is attached to the Claim.

⁴ Jones has received 152 payments as of February 28, 2019 (*Henderson Decl.* at ¶9.) The Wickham declaration incorrect stated that Jones had received 194 payments as of September 6, 2018 (*Wickham Decl.* at ¶10).

ARGUMENT

11. Section 502(a)(1)(B) of ERISA authorizes a participant in or a beneficiary of an employee benefit plan to “recover benefits due him under the terms of the plan.” 29 U.S.C. § 1132(a)(1)(B);⁵ *Graden*, 496 F.3d at 301. In order to assert a claim for denial of benefits under that provision, a plaintiff must allege “that ‘he or she ... ha[s] a right to benefits that is legally enforceable against the plan,’ and that the plan administrator improperly denied those benefits.” *Fleisher v. Standard Ins. Co.*, 679 F.3d 116, 120 (3d Cir. 2012) (quoting *Hooven v. Exxon Mobil Corp.*, 456 F.3d 566, 574 (3d Cir. 2006)).

12. The proper defendant in action brought for wrongful denial of benefits under 1132(a)(1)(B) is either “the plan itself or a person who controls the administration of benefits under the plan.” *Evans v. Employee Benefit Plan, Camp Dresser & McKee, Inc.*, 311 F. App’x 556, 558 (3d Cir. 2009) (affirming district court’s dismissal of the employer from the plaintiff’s action seeking benefits because the employer had no authority or responsibility for administering benefits under the plan or making any benefit determinations); *Graden*, 496 F.3d at 301 (3d Cir. 2007 (holding the proper defendant in an action brought under ERISA section 502(a)(1)(B) is either the plan itself or plan administrators in their official capacities only). This is because “if entitlement to benefits is established, the court can direct the plan administrator to pay them from the assets of the plan, much as a trustee may be compelled to satisfy a trust obligation from trust assets.” See *Woerner v. Fram Grp. Operations, LLC*, No. CV 12-6648 (SRC), 2017 WL 1735683, at *2 (D.N.J. Apr. 27, 2017) (citing *Hahnemann Univ. Hosp. v. All Shore, Inc.*, 514 F.3d 300, 308 (3d Cir. 2008)).

⁵ 29 U.S.C. § 1132(a)(1)(B) is also referred to as section 502(a)(1)(B) of ERISA.

13. The Third Circuit has made clear that “exercising control over the administration of benefits is the defining feature of the proper defendant under 29 U.S.C. § 1132(a)(1)(B).” *Evans*, 311 Fed. App’x. at 558. If the plan specifically delegates the discretion to determine eligibility for benefits to a third party, the employer sponsoring the plan is not a proper defendant. *Id.* at 558-59. Alternatively, “if an employer authorizes a third party to process claims or determine eligibility but nonetheless retains the ultimate power to decide, at its discretion, disputed claims, that employer would be a proper defendant.” *Woerner*, 2017 WL 1735683, at *2.

14. In this case, Jones asserts a Claim under ERISA for additional monthly benefits purportedly due under the Pension Plan. (*See* Claim at pp. 1-3). Jones’ purported claim for benefits under the Pension Plan falls under 29 U.S.C. § 1132(a)(1)(B). In the Pension Plan, Exide expressly delegated to the Benefits Committee the absolute discretion to make final decisions regarding plan administration, eligibility, computing claims and determining claims for benefits. (Ex. 1 at § 6.5.) Thus, the proper defendant in any action to recover benefits is the Pension Plan itself or the plan administrator, which is the Benefits Committee in its official capacity – not Exide. *See Graden*, 496 F.3d at 301.

15. Further, Jones seeks payment of unreduced early retirement benefits in the amount of \$606.05 per month. Even if Jones had a claim against the Debtor, any claim would be limited to a general unsecured claim to be paid consistent with the terms of the Plan. Under no set of circumstances would Jones be entitled to receive additional monthly payments from the Debtor in the full amount of \$254.32 (i.e., 606.05 - \$411.73). Based on the type of payment sought by Jones, it is abundantly clear that he seeks payment in full from the Pension Plan rather than an unsecured claim against the Debtor.

16. Finally, Exide has consulted with the Benefits Committee concerning the Claim and neither Exide nor the Benefits Committee believe that Jones has a valid claim against Exide under ERISA. (*Henderson Decl.* at ¶9.) Notwithstanding the foregoing, in order to address the Court's concern raised at the November 29 Hearing, Exide and the Benefits Committee agree that the denial of Jones' proof of claim against Exide in the bankruptcy case will not be asserted by the Benefits Committee as a basis to impair any purported claim, if any, that Jones' may have under ERISA against the Pension Plan for unreduced monthly benefits. (*Id.*) This acknowledgement should address any concerns that the disallowance of the Claim would impair any purported rights, if any, that Jones may have against the Pension Plan.

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

Dated: March 6, 2019

FOX ROTHSCHILD LLP
Robert M. Fishman
Allen J. Guon
Christina M. Sanfelippo
321 N. Clark Street, Suite 800
Chicago, IL 60654
Telephone: (312) 541-0151
Facsimile: (312) 980-3888
Email: rfishman@foxrothschild.com
aguon@foxrothschild.com
csanfelippo@foxrothschild.com

Counsel for the Reorganized Debtor

-and-

PACHULSKI STANG ZIEHL & JONES LLP



Laura Davis Jones (Bar No. 2436)
James E. O'Neill (Bar No. 4042)
919 N. Market Street, 17th Floor
Wilmington, DE 19801
Telephone: (302) 652-4100
Facsimile: (302) 652-4400
Email: ljones@pszjlaw.com
joneill@pszjlaw.com

Special Conflicts Counsel for the Reorganized Debtor

EXHIBIT 1

**EXIDE TECHNOLOGIES RETIREMENT PLAN
(Amended and Restated Effective November 1, 2015)**

ARTICLE VI
ADMINISTRATION

6.1 Board of Directors Duties.

The Board will have overall responsibility for the establishment, amendment, termination, administration and operation of the Plan, which responsibility it will discharge by the appointment and removal (with or without cause) of the members of the Benefits Committee, to which is delegated the overall responsibility for the amendment, termination, administration and operation of the Plan other than with regard to Plan investments. Responsibility for Plan investments is delegated to the Investment Committee. The Benefits Committee will be the administrator of the Plan, as such term is defined in Section 3(16)(A) of ERISA.

6.2 Benefits Committee Membership.

The Benefits Committee will consist of one or more members, who will be appointed by the Board. In the absence of such appointment, the Company will serve as the Benefits Committee. The members of the Benefits Committee will remain in office at the will of the Board, and the Board may from time to time remove any of said members with or without cause and will appoint their successors.

6.3 Benefits Committee Structure.

Each member of the Benefits Committee may (but need not) be an officer, director or employee of the Company, a Participant, a Contingent Annuitant or Beneficiary. Each person, upon becoming a member of the Benefits Committee, will file an acceptance thereof in writing with the Board and the secretary of the Benefits Committee. Any member of the Benefits Committee may resign by delivering his written resignation to the Board and the secretary of the Benefits Committee, and such resignation will become effective upon the date specified therein. In the event of a vacancy in membership of the Benefits Committee, the remaining members will constitute the Benefits Committee with full power to act until said vacancy is filled.

6.4 Benefits Committee Actions.

The actions of the Benefits Committee will be determined by the vote or other affirmative expression of a majority of its members. Action may be taken by the Benefits Committee at a meeting or in writing without a meeting. The Benefits Committee will choose a chairman who will be a member of the Benefits Committee and a secretary who may (but need not) be a member of the Benefits Committee. The secretary will keep a record of all meetings and acts of the Benefits Committee and will have custody of all records and documents pertaining to its operations. Either the chairman or secretary may execute any certificate or other written direction on behalf of the Benefits Committee.

6.5 Benefits Committee Duties.

The Benefits Committee on behalf of the Participants and beneficiaries of the Plan will enforce the Plan and the Trust Agreement in accordance with their terms and will have all powers (including complete and absolute discretion in determining all matters within its jurisdiction) necessary to accomplish that purpose, including, but not by way of limitation, the following:

- (a) To issue rules and regulations necessary for the proper conduct and administration of the Plan and to change, alter, or amend such rules and regulations;
- (b) To construe the Plan and Trust Agreement;
- (c) To determine all questions arising in the administration of the Plan, including those relating to the eligibility of persons to become Participants and the rights of Participants and beneficiaries, and its decision thereon will be final and binding upon all persons hereunder;
- (d) To compute and certify to the Trustee the amount and kind of benefits payable to Participants or beneficiaries;
- (e) To authorize all disbursements from the Retirement Fund in accordance with the provisions of the Plan;
- (f) To employ and suitably compensate such accountants, attorneys (who may but need not be the accountants or attorneys of the Company), and other persons to render advice and clerical employees as it may deem necessary to the performance of its duties, and to effect payment of such compensation from the Retirement Fund, to the extent that payment is not made directly by the Company;
- (g) To hear, review and determine claims for benefits;
- (h) To exercise any rights, powers or privileges granted to it by the terms of the Plan or Trust Agreement;
- (i) To communicate the Plan and its eligibility requirements to employees and notify employees when they become eligible to participate; and
- (j) To make available to Participants upon request, for examination during business hours, such records as pertain to the examining Participant.

6.6 Allocations and Delegations of Responsibility.

(a) **Delegation.** The Board and the Benefits Committee will have the authority to delegate, from time to time, by instrument in writing filed in their respective minute books, all or any part of their respective responsibilities under the Plan to such person or persons as it may deem advisable (and may authorize such person, upon receiving written consent of the

delegating entity, to delegate such responsibilities to such other person or persons as the delegating entity will authorize) and in the same manner to revoke any such delegation of responsibility. Any action of the delegate in the exercise of such delegated responsibilities will have the same force and effect for all purposes hereunder as if such action had been taken by the delegating entity. The Company, the Board and the Benefits Committee will not be liable for any acts or omissions of any such delegate. The delegate will periodically report to the delegating authority concerning the discharge of the delegated responsibilities.

(b) **Allocation.** The Board and the Benefits Committee will have the authority to allocate, from time to time, by instrument in writing filed in their respective minute books, all or any part of their respective responsibilities under the Plan to one or more of their respective members as they may deem advisable, and in the same manner to revoke such allocation of responsibilities. Any action of the member to whom responsibilities are allocated in the exercise of such allocated responsibilities will have the same force and effect for all purposes hereunder as if such action had been taken by the allocating entity. The Company, the Board and the Benefits Committee will not be liable for any acts or omissions of such member. The member to whom responsibilities have been allocated will periodically report to the allocating authority concerning the discharge of the allocated responsibilities.

6.7 Benefits Committee Bonding and Compensation.

The members of the Benefits Committee will serve without bond, except as otherwise required by federal law, and without compensation for their services as such.

6.8 Information to be Supplied by the Company.

The Company will provide the Benefits Committee or its delegate with such information as it will from time to time need in the discharge of its duties. The Benefits Committee may rely conclusively on the information certified to it by the Company.

6.9 Records.

The regularly kept records of the Benefits Committee and the Company will be conclusive evidence of the service of a Participant, his compensation, his age, his marital status, his status as an Employee, and all other matters contained therein applicable to the Plan.

6.10 Benefits Committee Decisions Final.

The Benefits Committee will have discretion in determining all matters within its jurisdiction, including factual matters, and the decisions of the Benefits Committee in matters within its jurisdiction will be final, binding and conclusive upon the Company and the Trustee, and upon each employee, Participant, former Participant, beneficiary and every other person or party interested or concerned.

6.11 Application for Benefits.

Each person eligible for a benefit under this Plan will apply for such benefit by signing an application form to be furnished by the Benefits Committee. Each such person will

also furnish the Benefits Committee with such documents, evidence, data or information in support of such application as it considers necessary or desirable. Payment of benefits will be deferred until all necessary information is supplied. In the event that a Participant or beneficiary fails to apply to the Benefits Committee for pension benefits by the earlier of (a) the Participant's Normal Retirement Date, or (b) the Required Beginning Date, the Benefits Committee will make diligent efforts to locate such Participant or beneficiary and obtain such application or pay benefits in absence of an application, subject to the terms of the Plan.

6.12 Claims.

(a) Rights. If a Participant or beneficiary has any grievance, complaint or claim concerning any aspect of the operation or administration of the Plan or its trust, including but not limited to claims for benefits and complaints concerning the investments of Plan assets (collectively referred to herein as "claim" or "claims"), the Participant or beneficiary will submit the claim in accordance with the procedures set forth in this section. All such claims must be submitted within the "applicable limitations period." The "applicable limitations period" will be 2 years, beginning on (i) in the case of any lump-sum payment, the date on which the payment was made, (ii) in the case of a periodic payment, the date of the first in the series of payments, or (iii) for all other claims, the date on which the action complained of occurred. Additionally, upon denial of an appeal pursuant to subsection (c) hereof, a Participant or beneficiary will have 90 days within which to bring suit for any claim related to such denied appeal; any such suit initiated after such 90-day period will be precluded.

(b) Procedure. Claims for benefits under the Plan may be filed with the Benefits Committee in accordance with subsection (b)(1) or (b)(2) hereof, as applicable.

(1) Generally. Except as provided in subsection (b)(2) hereof, the Benefits Committee will furnish to the claimant written notice of the disposition of a claim within 90 days after the application therefor is filed; provided, if special circumstances require an extension of time for processing the claim, the Benefits Committee will furnish written notice of the extension to the claimant before the end of the initial 90-day period, and such extension will not exceed one additional, consecutive 90-day period. In the event the claim is denied, the notice of the disposition of the claim will provide the specific reasons for the denial, cites of the pertinent provisions of the Plan, an explanation as to how the claimant can perfect the claim and/or submit the claim for review (where appropriate), and a statement of the claimant's right to bring a civil action under ERISA Section 502(a) following an adverse determination on review.

(2) Claims Based on an Independent Determination of Disability. With respect to a claim for benefits under the Plan based on disability (other than disability based solely on a determination of eligibility for Social Security disability benefits), the Benefits Committee will furnish to the claimant written notice of the disposition of a claim within 45 days after the application therefor is filed; provided, if matters beyond the control of the Benefits Committee require an extension of time for processing the claim, the Benefits Committee will furnish written notice of the extension to the claimant before the end of the initial 45-day period, and such extension

will not exceed one additional, consecutive 30-day period; and, provided further, if matters beyond the control of the Benefits Committee require an additional extension of time for processing the claim, the Benefits Committee will furnish written notice of the second extension to the claimant before the end of the initial 30-day extension period, and such extension will not exceed an additional, consecutive 30-day period. Notice of any extension under this subsection will specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues. In the event the claim is denied, the notice of the disposition of the claim will provide the specific reasons for the denial, cite the pertinent provisions of the Plan, an explanation as to how the claimant can perfect the claim and/or submit the claim for review (where appropriate), and a statement of the claimant's right to bring a civil action under ERISA Section 502(a) following an adverse determination on review.

(c) **Review Procedure.** Any Participant or beneficiary who has been denied a benefit, or his duly authorized representative, will be entitled, upon request to the Benefits Committee, to appeal the denial of his claim in accordance with subsection (c)(1) or (c)(2) hereof, as applicable.

(1) **Generally.** Except as provided in subsection (c)(2) hereof, the claimant or his duly authorized representative may review pertinent documents related to the Plan and in the Benefits Committee's possession in order to prepare the appeal. The form containing the request for review, together with a written statement of the claimant's position, must be filed with the Benefits Committee no later than 60 days after receipt of the written notification of denial of a claim provided for in subsection (b) hereof. The Benefits Committee's decision will be made within 60 days following the filing of the request for review and will be communicated in writing to the claimant; provided, if special circumstances require an extension of time for processing the appeal, the Benefits Committee will furnish written notice to the claimant before the end of the initial 60-day period, and such an extension will not exceed one additional 60-day period. If unfavorable, the notice of decision will explain the reason or reasons for denial, indicate the provisions of the Plan or other documents used to arrive at the decision, and state the claimant's right to bring a civil action under ERISA Section 502(a).

(2) **Claims Based on an Independent Determination of Disability.** With respect to an appeal of a denial of benefits under the Plan based on disability (other than disability based solely on a determination of eligibility for Social Security disability benefits), the claimant or his duly authorized representative may review pertinent documents related to the Plan and in the Benefits Committee's possession in order to prepare the appeal. The form containing the request for review, together with a written statement of the claimant's position, must be filed with the Benefits Committee no later than 180 days after receipt of the written notification of denial of a claim provided for in subsection (b) hereof. The Benefits Committee's decision will be made within 45 days following the filing of the request for review and will be communicated in writing to the claimant; provided, if special circumstances require an extension of time for processing the appeal, the Benefits Committee will furnish written notice to the

claimant before the end of the initial 45-day period, and such an extension will not exceed one additional 45-day period. The Benefits Committee's review will not afford deference to the initial adverse benefit determination and will be conducted by an individual who is neither the individual who made the adverse benefit determination that is the subject of the appeal, nor the subordinate of such individual. In deciding an appeal of any adverse benefit determination that is based in whole or in part on a medical judgment, the Benefits Committee will consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment and who is neither an individual who was consulted in connection with the adverse benefit determination that is the subject of the appeal, nor the subordinate of any such individual. If unfavorable, the notice of decision will explain the reason or reasons for denial, indicate the provisions of the Plan or other documents used to arrive at the decision, state the claimant's right to bring a civil action under ERISA Section 502(a), and identify all medical or vocational experts whose advice was obtained by the Benefits Committee in connection with a claimant's adverse benefit determination.

(d) **Satisfaction of Claims.** Any payment to a Participant or beneficiary, or to his legal representative or heirs at law, all in accordance with the provisions of the Plan, will to the extent thereof be in full satisfaction of all claims hereunder against the Trustee, the Benefits Committee, and the Employers, any of whom may require such Participant, beneficiary, legal representative or heirs at law, as a condition to such payment, to execute a receipt and release therefor in such form as will be determined by the Trustee, the Benefits Committee or the Employer, as the case may be. If receipt and release are required but execution by such Participant, beneficiary, legal representative or heirs at law will not be accomplished so that the terms of the Plan dealing with the timing of distributions may be fulfilled, such benefits may be distributed or paid into any appropriate court or to such other place as such court directs, for disposition in accordance with the order of such court, and such distribution will be deemed to comply with the requirements of the Plan.

6.13 Missing Persons.

Each Participant and beneficiary will keep the Benefits Committee advised of his current address. If a benefit becomes distributable and the Benefits Committee is unable to locate the Participant or beneficiary to whom the distribution is payable for a period of 5 years from the time such distribution first becomes payable, such benefit will be forfeited. However, if the Participant or beneficiary thereafter applies for a benefit to which the Participant or beneficiary was originally entitled, such benefit will be paid from the general assets of the Retirement Fund.

6.14 Indemnity for Liability.

The Employer will indemnify the members of the Benefits Committee, and any other fiduciary who is an officer, director or employee of the Company or of an Employer, against any and all claims, losses, damages and expenses, including counsel fees, incurred by such persons and any liability, including any amounts paid in settlement with the Company's

approval, arising from such person's action or failure to act, except when the same is judicially determined to be attributable to the gross negligence or willful misconduct of such person.

EXHIBIT 2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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 In re: : Chapter 11
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 EXIDE TECHNOLOGIES, : Case No. 13-11482 (KJC)
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 Reorganized Debtor,¹ :
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DECLARATION OF WENDY HENDERSON IN SUPPORT OF REORGANIZED DEBTOR'S SUPPLEMENTAL RESPONSE IN SUPPORT OF THE REORGANIZED DEBTOR'S OBJECTION TO THE CLAIM OF WILLIE JONES, JR. (CLAIM NO. 911)

1. My name is Wendy Henderson. I am over the age of 18 and competent to testify. I am the Senior Vice President and Chief Human Resources Officer at Exide ("Exide" or the "Reorganized Debtor"). I submit this declaration in support of the *Reorganized Debtor's Supplemental Response in Support of the Reorganized Debtor's Objection to the Claim of Willie Jones, Jr. (Claim No. 911)* (the "Supplemental Response"). I have read and am familiar with the contents of the Supplemental Response.²

2. I have held my current position with Exide since June 1, 2017. As a result of my time with Exide, my review of relevant documents, and my discussions with other members of the Compensation and Benefits department at Exide, I am familiar with the aspects of Exide Technologies Retirement Plan (the "Pension Plan"), which is the sole surviving defined benefit pension plan sponsored by Exide for US-based employees.

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 otherwise defined herein shall have the meanings ascribed to such terms in the Supplemental Response.

3. I am also a member of the Exide Technologies Benefits Administration Committee ("Benefits Committee"). The Benefits Committee, which is appointed by Exide's Board of Directors, "is delegated the overall responsibility for the amendment, termination, administration and operation of the Plan other than with regard to Plan investments." See Pension Plan at § 6.1. The Benefits Committee, and not the Debtor or Reorganized Debtor, is the administrator of the Pension Plan.

4. I am authorized to submit this Declaration on behalf of Exide and the Benefits Committee and if called to testify as a witness in this matter, I could and would testify competently to the facts set forth herein. My personal knowledge of the matters set forth in this Declaration is based solely on my discussions with members of Exide's Compensation and Benefits department, my discussions with the Benefits Committee, and my review of relevant documents.

5. The Pension Plan covers virtually all of Exide's active and former employees who were hired prior to 2006, including active former employees of Gould National Battery, which was purchased by Exide in 2000, and hourly union employees covered by certain collective bargaining agreements. The Pension Plan is closed to new entrants, and benefits under the Pension Plan are frozen for all participants.

6. Since Exide emerged from bankruptcy as the Reorganized Debtor in 2015, the Pension Plan has continued to pay all retiree benefits in accordance with, and subject to, its terms, Employee Retirement Income Security Act of 1974, and the Internal Revenue Code.

7. Willie Jones, Jr. ("Jones") is currently entitled to receive from the Pension Plan reduced monthly lifetime benefits of \$411.73. As of the date of this Declaration, the Pension Plan has made a total of 152 payments to Jones.

8. A total of 22 former employees were eligible for early retirement in connection with the closure of the Shreveport facility. Each of the former employees that elected to receive early retirement, including Jones, received reduced monthly retiree benefits calculated in a manner consistent with the Pension Plan.

9. While the Benefits Committee has determined that Jones does not have a valid basis to assert a claim against the Pension Plan for unreduced retirement benefits, the Benefits Committee agrees that the denial of Jones' proof of claim against Exide in the bankruptcy case will not be asserted by the Benefits Committee as a basis to impair any purported claim, if any, that Jones' may have under § 502(a)(1)(B) of ERISA against the Pension Plan for unreduced monthly benefits.

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 February 28, 2019

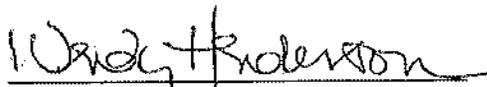

Wendy Henderson

EXHIBIT 3

**LAW OFFICES
OF
J. RANSDALL KEENE**

J. Ransdell Keene

725 Southfield Road
Shreveport, Louisiana 71106
www.keene1040@aol.com

Phone: (318)219-3921
(318)401-3984
(318)402-1626

Fax: (318)219-3920

September 4, 2008

Mr. Willie J. Jones, Jr.
9278 Stratmoor St.
Shreveport, LA 71129

Re: Retirement Claim

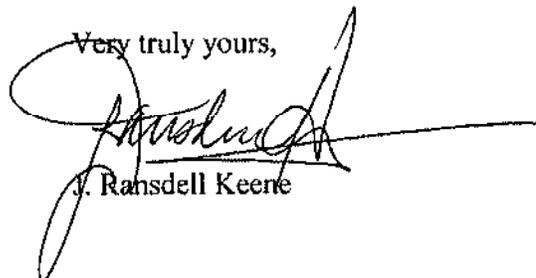
Dear Mr. Jones:

Because you have indicated that you have no money to pay the fees and costs as agreed by you in the attached contract, I am returning your entire file to you.

The statute applicable to your case is Title 29, United States, Section 1132(e)(1). That statute indicates that you can file in either state or federal court. I have extensive experience in both and I am of the opinion that state court will be a better venue for you. I understand that someone is telling you different.

I am enclosing a copy of the Petition which would have been filed if you could honor your contract. I have expended approximately 10 hours to date in handling your case, meeting with you and researching the issues under your contract you owe me \$2000 minus the \$600.00 for a balance of \$1400.00. I am writing off the balance.

Very truly yours,



J. Ransdell Keene

JRK/lhb

Enclosures

WILLIE J. JONES, JR.

: NUMBER:

VERSUS

: FIRST JUDICIAL DISTRICT COURT
Section:

GNB TECHNOLOGIES, INC. PENSION
PLAN FOR HOURLY SHREVEPORT
EMPLOYEES, A COMPONENT OF THE
GNB TECHNOLOGIES INC. EMPLOYEE
BENEFIT PLAN

: CADDO PARISH, LOUISIANA

PETITION

NOW INTO COURT, through undersigned counsel, comes WILLIE J. JONES, JR.,
made petitioner herein who respectfully alleges and represents as follows:

1.

Petitioner is a resident and domiciliary of Shreveport, Louisiana.

2.

This Court has jurisdiction over this matter by virtue of a grant of jurisdiction made in
Title 29, United States Code, Section 1132(e)(1).

3.

Made defendants here is GNB Technologies Inc. Pension Plan for Hourly Shreveport
Employees, a component of the GNB Technologies Inc. Employee Benefit Plan which conducted
business in Caddo Parish, Louisiana.

4.

At all times pertinent hereto the defendant was managed and administered by the GNB
Technologies Benefit Committee which sometimes refers to itself as the Exide Technologies
Employee Benefits Department of Exide Technologies.

5.

Petitioner was and had been an employer of the Exide Technologies, Inc. ("the
Company") plant in Caddo Parish when it closed operations in 2006.

6.

As an employee, petitioner was entitled to the benefits and contractual obligations of a

certain collective bargaining agreement between GNB Technologies, Inc. a/k/a Exide Technologies, Inc. and UAW Local 1532. This agreement created individual benefits under ERISA for petitioner and others.

7.

The collective bargaining agreement provided that in normal circumstances for a reduced retirement eligibility before age 62 and a full retirement age of 65 with 30 years of service, or at age 62 having completed 5 years of service.

8.

However when "the Company" closed the plant in Caddo Parish, it entered into a Closing Agreement with UAW Local 1532 wherein "the Company" agreed to a "special early retirement (age 55 and 10 years of service) . . . as of June 22, 2006."

9.

Prior to the plant closing, representatives of "the Company" held meetings with petitioner and other employees similarly situated and assured petitioner (and others) that there would be no reduction for a "special early retirement."

10.

Consistent with the representations made in paragraph 9 herein above, the Company delivered a document to petitioner which stated that a "special early retirement" had no reduction of benefits for "early retirement."

11.

At the closing of the plant petitioner was 56 years old and had been employed with "the Company" for 17 years.

12.

Because petitioner elected a 55% Joint & Survivor Annuity on his Retirement Option Election Form from the defendant, petitioner is entitled to at least the sum of \$666.05 per month the defendant.

13.

Defendant has refused to pay.

14.

Pursuant to the ERISA Plan petitioner administratively appealed to the Plan administrator which denied same in a letter dated April 18, 2008 and informed petitioner that he had the right to bring a civil action in state or federal court.

15.

Petitioner is entitled to his "special early retirement" attorney's fee and all costs pursuant to Title 29, United States Code, Section 1132 (g)(1).

WHEREFORE, petitioner prays that after service, citation, due proceedings and a trial be held that he have Judgment against defendant, GNB Technologies Inc. Pension Plan for Hourly Shreveport Employees, a component of the GNB Technologies Inc. Employee Benefit Plan which conducted business in Caddo Parish, Louisiana, for his full special early retirement benefits retroactive to the date when he applied for them, reasonable attorney's fees, all costs, legal interest and all such other legal and equitable relief as may be fair and just in the premises.

Respectfully submitted,

LAW OFFICES OF J. RANDELL KEENE

By: _____
J. Ransdell Keene, LA BRN 07673

725 Southfield Road
Shreveport, Louisiana 71106
(318)219-3921
(318)219-3920 (fax)

Attorney for Willie J. Jones, Jr.

PLEASE SERVE:

**GNB Technologies Inc.
GNB Technologies Benefit Committee
through its agent for service of process:
C T Corporation System
1032 Norwest Midland Bank Building
Minneapolis, Minnesota 55401**

WILLIE J. JONES, JR. : NUMBER:
 VERSUS : FIRST JUDICIAL DISTRICT COURT
 Section:
 GNB TECHNOLOGIES, INC. PENSION
 PLAN FOR HOURLY SHREVEPORT
 EMPLOYEES, A COMPONENT OF THE
 GNB TECHNOLOGIES INC. EMPLOYEE
 BENEFIT PLAN : CADDO PARISH, LOUISIANA

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF CADDO

BEFORE ME, the undersigned authority, personally came and appeared:

WILLIE J. JONES, JR.

who, after being duly sworn, did depose and state that:

He is the petitioner in the foregoing petition, and that all allegations contained in said
petition are true and correct to the best of his knowledge, information and belief.

Willie J. Jones, Jr.

SWORN TO AND SUBSCRIBED before me, the undersigned Notary Public, on this the
____ day of _____, 2008.

Notary Public