

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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Debtor.¹ : **Related Docket No.** 8

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ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363(b), 503(b), 506, 1107 AND 1108 AND FED. R. BANKR. P. 6003 AUTHORIZING PAYMENT OF CERTAIN PREPETITION SHIPPING AND DELIVERY CHARGES

Upon the motion (the "Motion")² of the Debtor for entry of an order, pursuant to Bankruptcy Code sections 105(a), 363(b), 503(b), 506, 1107 and 1108 and Bankruptcy Rule 6003, authorizing the Debtor to pay (i) certain prepetition shipping, warehousing, and related charges (the "Shipping Charges") and (ii) certain prepetition customs duties, detention and demurrage fees, tariffs and excise taxes, freight forwarding or consolidation charges and other similar obligations (the "Import/Export Charges"); and upon the First Day Declaration; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested by the Motion is in the best interests of the Debtor, its estate, its creditors, its shareholders and other parties in interest; and after due deliberation thereon and sufficient cause appearing therefor, it is hereby

¹ The last four digits of the Debtor's taxpayer identification number are 2730. The Debtor's corporate headquarters are 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004.

² Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

ORDERED, ADJUDGED AND DECREED that:

1. The Motion is GRANTED as set forth herein.

2. Subject to paragraph 4, the Debtor is authorized, but not directed, to make such payments, either directly or indirectly, to the Distribution Vendors for the obligations owing in respect of the Shipping Charges as the Debtor determines, in the exercise of its business judgment, are necessary or appropriate to (a) secure the delivery, distribution and sale of the Debtor's goods to customers throughout the United States and abroad, (b) ensure the delivery of goods and raw materials to the Debtor's facilities or (c) satisfy liens, if any, in respect of amounts owed to such parties. The Debtor is authorized, but not directed, to pay the Shipping Charges, in the ordinary course of business, in an aggregate amount of up to \$9.2 million, without prejudice to seek additional relief on an emergency basis.

3. The Debtor is authorized, but not directed, to make payments directly or indirectly to the Import/Export Providers for obligations owing in respect of the Import/Export Charges as the Debtor determines, in the exercise of its business judgment, are necessary or appropriate to secure the import or export of goods. The Debtor is authorized, but not directed, to pay the Import/Export Charges, in the ordinary course of business, in an aggregate amount of up to \$123,000, without prejudice to seek additional relief on an emergency basis.

4. The Debtor is authorized, in its sole discretion to pay the Shipping Charges on the following terms and conditions:

- (a) The Debtor, in its sole discretion, shall determine which parties, if any, are entitled to payment under this Order subject to the limits imposed on the aggregate payments authorized to be made under this Order;
- (b) If a party accepts payment under this Order, such party is deemed to have agreed to (i) release any liens it may have on the Debtor's goods or property provided, however, that should such party fail promptly to release such lien and/or interest upon payment by the

Debtors, any such lien and/or interest shall be deemed released and expunged, without necessity of further action, and this Order, together with proof of payment, shall be all that is required to evidence such release and expungement, and (ii) subject to subparagraph (d) below, continue to provide goods or services to the Debtor on customary trade terms during the pendency of this Chapter 11 Case. Customary Trade Terms means (i) the most favorable trade terms and conditions, including credit terms, in effect between the Distribution Vendor and the Debtor during the 180 days preceding the Petition Date³ or (ii) such other trade terms as the Debtor and the Distribution Vendor may mutually agree upon;

- (c) Subject to subparagraph (d), if a party accepts payment under this Order and thereafter does not continue to provide goods or services to the Debtor on the Customary Terms during the pendency of this Chapter 11 Case, then (i) any payment on a prepetition claim received by such party shall be deemed to be an unauthorized voidable postpetition transfer under Bankruptcy Code Section 549 and, therefore, recoverable by the Debtor in cash upon written request and (ii) subject to subparagraph (f) below, upon recovery by the Debtor, any such prepetition claim shall be reinstated as if the payment had not been made, less the Debtor's reasonable costs in recovering such amounts;
- (d) In the event of the assertion of a possessory lien against the Debtor's property that prevents the Debtor from accessing its property without payment of the prepetition claim giving rise to the lien, the Debtor may pay the claim without regard to subparagraphs (b)(ii) and (c) above; and
- (e) Prior to paying a prepetition claim under this Order, the Debtor may, in its absolute discretion, settle all or part of such claim for less than its face amount without further notice or hearing. In any event, the Debtor may elect to only pay part of a prepetition claim under the authorization granted, leaving the remainder of the claim to be addressed pursuant to their plan of reorganization.

5. Should the Debtor seek to recover payments under paragraph 4(c) of this Order, nothing in this Order shall preclude a party from contesting such treatment by making a

³ In the event the relationship between the party accepting payment under this Order and the Debtor does not extend to 180 days preceding the Petition Date, the Customary Terms shall mean the terms that the party generally extends to its customers or such terms as are acceptable to the Debtor in the reasonable exercise of their business judgment.

written request (the "Request") to the Debtor to schedule a hearing before this Court. If such a Request is made, the hearing on the Request will be the next scheduled hearing date not less than thirty (30) days after the Debtor received the Request, of which hearing the Debtor will provide notice to the requesting party and other interested parties in accordance with the Bankruptcy Code and the orders of this Court.

6. The Debtor shall provide, on a confidential basis, to the agent for the Debtor's proposed postpetition financing (the "DIP Agent") bi-weekly written reports of all payments made hereunder and reasonable and timely access to information sufficient to enable such parties to monitor payments made, obligations satisfied, and other actions taken pursuant to this Order; *provided* that the DIP Agent may share such information with its professionals and any private-side lenders under the proposed postpetition financing facility.

7. All applicable banks and other financial institutions are authorized to rely on the Debtor's direction to pay amounts in accordance with this Order provided that there are sufficient good funds standing to the Debtor's credit in the applicable accounts to make the payments and all applicable banks shall not have any liability to any party for relying on the Debtor's direction.

8. The Debtor is authorized to issue postpetition checks as necessary to replace any prepetition checks that were issued with respect to the Subject Charges and may be dishonored.

9. The authority granted by this Order to pay certain claims shall not be construed as: (a) an admission by the Debtor as to the validity of any claim against the Debtor; (b) a waiver of the Debtor's rights to dispute any claim on any grounds; (c) a promise by the Debtor to pay any claim; (d) an implication or admission by the Debtor that any particular claim

would constitute a Subject Charge; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code Section 365; or (f) otherwise affect the Debtor's rights under Bankruptcy Code Section 365 to assume or reject any executory contract with any party subject to this Order.

10. The Debtor nor its officers, directors, attorneys or agents shall have any liability on account of any decision by the Debtor not to pay a Subject Charge, and nothing contained in this order shall be deemed to increase, reclassify, elevate to an administrative expense status or otherwise affect a Subject Charge to the extent it is not paid.

11. Nothing in the Motion or this Order, nor the Debtor's implementation of the relief granted in this Order, shall be deemed to modify or waive any of the Debtor's rights with respect to goods and services requested or received from the Distribution Vendors or the Import/Export Providers, including the Debtor's rights to (a) cancel or contest any invoice on any grounds, or (b) decline the acceptance of goods and services.

12. To the extent that there may be any inconsistency between the terms of the interim or final order approving the proposed debtor in possession financing, if and when entered, and this Order, the terms of the interim or final order approving the proposed debtor in possession financing, as applicable shall govern.

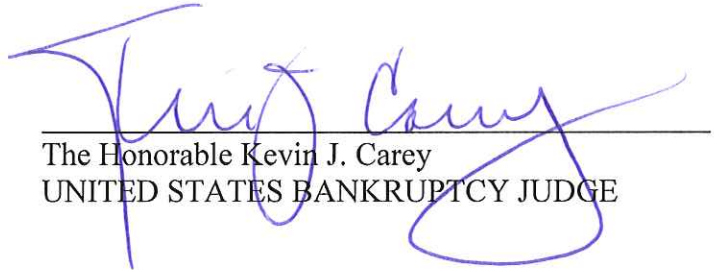
13. This Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

14. Notwithstanding Bankruptcy Rule 6004(h), this order shall be effective and enforceable immediately upon entry hereof.

15. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this order.

Dated: Wilmington, Delaware

June 11, 2013



The Honorable Kevin J. Carey
UNITED STATES BANKRUPTCY JUDGE