

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
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Debtor.¹ :
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DEBTOR’S MOTION FOR ORDER PURSUANT TO 11 U.S.C. §§ 105, 363, 1107, AND 1108 AND FED. R. BANKR. P. 6003 AND 6004 AUTHORIZING DEBTOR TO PAY PREPETITION CLAIMS OF CERTAIN FOREIGN VENDORS AND SERVICE PROVIDERS

Exide Technologies (“Exide” or the “Debtor”) hereby moves (the “Motion”) this Court for entry of an interim order (the “Interim Order”) and a final order (the “Final Order”), under sections 105, 363, 1107, and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing, but not directing, the Debtor to pay, in the ordinary course of business, to the extent permitted by the Debtor’s postpetition financing agreements, certain prepetition obligations to foreign suppliers of goods and services (collectively, the “Foreign Vendors”). In support of the Motion, the Debtor relies upon and incorporates by reference the Declaration of Phillip A. Damaska in Support of Chapter 11 Petition and First Day Pleadings (the “First Day Declaration”), filed with the Court concurrently herewith. In further support of the Motion, the Debtor, by and through its proposed undersigned counsel, respectfully represents:

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.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of the case and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 363, 1107, and 1108 and Bankruptcy Rules 6003 and 6004.

3. Pursuant to Rule 9013-1(f) of the Local Rules for the United States Bankruptcy Court for the District of Delaware, the Debtor consents to the entry of a final judgment or order with respect to the Motion if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

BACKGROUND

A. The Chapter 11 Case

4. On the date hereof (the "Petition Date"), the Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Case").²

5. The Debtor continues to operate its business and manage its property as debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. To date, no creditors' committee has been appointed by the United States Trustee. No trustee or examiner has been appointed in the Chapter 11 Case.

² The Debtor's predecessor has a chapter 11 case currently pending in this District (Case No. 02-11125) (the "Previous Chapter 11 Case"). The Previous Chapter 11 Case was filed on April 15, 2002, and the Debtor and certain of its U.S. subsidiaries emerged from chapter 11 on May 5, 2004. There is one claim remaining open in the Previous Chapter 11 Case. In addition, there is a pending adversary proceeding in which a settlement agreement to allow a general unsecured, non-priority claim has been approved by this Court, but is awaiting final approval from the state chancery court to become effective. The Debtor will confer with this Court regarding the disposition of the Previous Chapter 11 Case at the appropriate time.

B. The Debtor's Business

7. The Debtor, Exide, which together with its direct and indirect subsidiaries (collectively, the "Company"), has operations in more than 80 countries, is a global leader in stored electrical energy solutions and one of the world's largest producers and recyclers of lead-acid batteries.

8. The Company's four global business groups—Transportation Americas, Transportation Europe and Rest of World ("ROW"), Industrial Energy Americas, and Industrial Energy Europe and ROW—provide a comprehensive range of stored electrical energy products and services for industrial and transportation applications. The Company manufactures and distributes transportation and industrial batteries in North America, Europe, Asia, the Middle East, India, Australia, and New Zealand. In the transportation segments, the Company distributes and markets transportation batteries, which include starting, lighting, and ignition batteries for cars, trucks, off-road vehicles, agricultural and construction vehicles, motorcycles, recreational vehicles, marine, and other applications to a broad range of retailers, distributors of replacement or after-market batteries, and automotive original equipment manufacturers ("OEM"). The Company's industrial batteries consist of motive power batteries and network power applications. Motive power batteries are used in the material handling industry for equipment such as electric fork-lift trucks as well as in other machinery, including floor cleaning machinery, powered wheelchairs, railroad locomotives, mining equipment, and electric road vehicles. Network power batteries provide energy storage solutions for critical systems that require uninterrupted power supply and are used to power, among other things, telecommunications systems, computer installations and data centers, hospitals, air traffic control systems, security systems, electric utilities, railways, and various military applications. The

Company has a diverse customer base that includes a number of major end-user customers, retail and OEM, and includes market winners and industry leaders.

9. The Debtor, headquartered in Milton, Georgia, operates 13 manufacturing facilities in the United States. The Debtor also operates approximately 74 branches³ throughout North America, which sell and distribute batteries and other products to customers, battery specialists, retail stores, and OEM dealers. In addition, branch locations collect spent batteries for the Debtor's recycling facilities. Exide has five smelters, three of which are currently active battery collection and recycling facilities.⁴ These facilities reclaim lead by recycling spent lead-acid batteries, which are obtained for recycling from Exide's customers and outside spent-battery collectors. In fiscal year 2013, approximately 530,575 tons of batteries, plant scrap, and range lead were recycled at Exide's smelters or by a third party at Exide's request, which efforts enabled Exide to better control the cost of the principal raw material—lead—used in making its products. In the United States, the Debtor historically has obtained the vast majority of its lead requirements from its recycling operations.⁵

10. Additional factual background information about the Debtor, including its business operations, its corporate and capital structures, its restructuring efforts, and the events leading to the filing of the Chapter 11 Case, is set forth in detail in the First Day Declaration.⁶

³ On average, branch locations are approximately 20,000 square feet in size and are generally leased for periods of 29 to 42 months.

⁴ The smelter furnaces melt lead from spent (i.e., expired) batteries to extract the lead so that it can be re-used to make new batteries.

⁵ In contrast, the Company obtains the majority of its lead requirements for its ROW operations on the open market from third-party suppliers.

⁶ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

RELIEF REQUESTED

11. By the Motion, the Debtor requests entry of an order authorizing the payment of prepetition claims of the Foreign Vendors with whom the Debtor continues to do business and whose goods and services are indispensable to the Debtor's continued operations (the "Foreign Vendor Claims") in the aggregate amount of \$1 million on an interim basis, and in the aggregate amount of approximately \$2 million on a final basis, without prejudice to seek additional relief on an emergency basis.

12. The Debtor proposes that prior to making a payment of a Foreign Vendor Claim under the Motion, the Debtor be authorized, in its absolute discretion, to settle all or some of the prepetition claims of such Foreign Vendor for less than their face amount without further notice or hearing.

13. In return for payment of the prepetition Foreign Vendor Claims in the ordinary course of business, unless otherwise waived by the Debtor in its sole discretion, the Debtor further requests authorization to require that the Foreign Vendors continue to provide goods and services to the Debtor on the most favorable terms in effect between such vendor and the Debtor in the 180 days prior to the Petition Date or on such other favorable terms as the Debtor and the Foreign Vendor may otherwise agree (the "Customary Trade Terms"). The Debtor proposes that the Customary Trade Terms apply for at least one year following the date of the agreement. If any Foreign Vendor accepts payment on account of a prepetition obligation of the Debtor and thereafter does not continue to provide goods or services to the Debtor on Customary Trade Terms, any payments made will be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and, therefore, will be recoverable by the Debtor in cash upon written request. Upon recovery by the Debtor, the claim will be reinstated as a prepetition claim in the amount so recovered. The Debtor also seeks authorization but not

direction to obtain written verification, before issuing payment to a Foreign Vendor, that such Foreign Vendor will continue to provide goods and services to the Debtor on Customary Trade Terms for the remaining term of the Foreign Vendor's agreement with the Debtor; provided, however, that the absence of such written verification will not limit the Debtor's rights sought hereunder.

14. Finally, the Debtor requests entry of an order authorizing, but not directing, all applicable banks and other financial institutions (collectively, the "Banks") to rely on the Debtor's direction to pay amounts authorized under this Motion provided that sufficient funds are available in the applicable accounts to make the payments.

15. For the reasons set forth below, the Debtor submits that the relief requested herein is in the best interest of the Debtor, its estate, creditors, stakeholders, and other parties in interest, and, therefore, should be granted.

BASIS FOR RELIEF

16. As set forth in the Debtor's Critical Vendor Motion,⁷ filed concurrently herewith, the Debtor took painstaking efforts to ensure the stability of its supply chain prior to commencing the Chapter 11 Case—including establishing parameters for a narrowly-tailored foreign vendor program to ensure the continued supply of Critical Goods and Services and preservation of its liquidity during the Chapter 11 Case. The development process involved a highly deliberative effort to design, structure, and execute a mechanism under which a core, centralized team—guided by turnaround professionals—will authorize payment only to those

⁷ See Debtor's Motion For Order (I) Under 11 U.S.C. §§ 105(a), 363(b), 364, 1107(a) And 1108 And Fed. R. Bankr. P. 6003 Authorizing Payment Of Prepetition Claims Of Certain Critical Vendors And Service Providers And (II) Under 11 U.S.C. §§ 105(a), 363(c) And 503(b)(1)(A) And Fed. R. Bankr. P. 6003 And 6004 Confirming Administrative Expense Priority Status Of Debtor's Undisputed Obligations For Postpetition Delivery Of Goods And Services.

Foreign Vendors critical to the Debtor's operations and subject to such Foreign Vendor's own obligations to provide Customary Trade Terms (as defined herein). This process was developed through meetings and dialogue between the Debtor's senior procurement team, Alvarez & Marsal, and counsel.

17. Although the Debtor believes that many of its Foreign Vendors may continue to do business with the Debtor after commencement of the Chapter 11 Case, the Debtor identified certain Foreign Vendors that may: (a) refuse to deliver goods and services without payment of their prepetition claims or (b) refuse to deliver goods and services on reasonable credit terms absent payment of prepetition claims, thereby effectively refusing to do business with the Debtor.

18. Importantly, the Debtor only seeks to pay the Foreign Vendor Claims of the Foreign Vendors that to the best of the Debtor's knowledge lack minimum contacts with the United States and, thus, may not be subject to the jurisdiction of this Court or the provisions of the Bankruptcy Code that otherwise protect the Debtor's assets and business operations—particularly the automatic stay. Based on the knowledge of the Debtor's personnel regarding the Foreign Vendors, the Debtor believes there is a material risk that the Foreign Vendors holding Foreign Vendor Claims against the Debtor may consider themselves to be beyond the jurisdiction of this Court, disregard the automatic stay, and engage in conduct that disrupts the Debtor's operations, or may simply be confused by the chapter 11 process, particularly those in countries with liquidation-oriented insolvency procedures. Notably, Foreign Vendors that believe the automatic stay does not govern their actions may exercise self-help (if permitted under local law), which could include shutting down the Debtor's access to essential goods and services.

19. Foreign Vendors may also sue the Debtor in a foreign court to recover prepetition amounts owed to them. If they are successful in obtaining a judgment against the Debtor, the Foreign Vendors may seek to exercise post-judgment remedies including seeking to attach the Debtor's foreign assets or withhold vital supplies and services from the Debtor. Since the Debtor would have limited, if any, effective and timely recourse and no practical ability to remedy this situation (absent payment of amounts sought), its businesses could be irreparably harmed by any such action to the detriment of its estate and its creditors.

20. In summary, payment of the Foreign Vendor Claims will allow the Debtor to continue to receive the services of, as well as eliminate the risk of the potential collection attempts by, the Foreign Vendors. The Debtor therefore believes that, given the circumstances and practical realities, it is in the best interests of its estate and creditors to have the authority to satisfy the Foreign Vendor Claims. Accordingly, the Debtor requests the Court's authority to pay the Foreign Vendor Claims because payment of such claims is necessary to an effective reorganization.

21. Finally, in return for payment of the prepetition Foreign Vendor Claims in the ordinary course of business, unless otherwise waived by the Debtor in its sole discretion, the Debtor requests authorization to require that the Foreign Vendors continue to provide goods and services to the Debtor on Customary Trade Terms. The Debtor proposes that the Customary Trade Terms apply for at least one year following the date of the agreement or until the date that a plan of reorganization or sale pursuant to section 363 of the Bankruptcy Code is substantially consummated, whichever is earlier, and as long as the Debtor agrees to pay for such goods in accordance with such terms. Thus, payment of the Foreign Vendor Claims may further benefit

the Debtor's estate by ensuring that the Debtor continues to receive the critical goods and services of the Foreign Vendors on favorable trade terms.

APPLICABLE AUTHORITY

A. **Payment of the Foreign Vendor Claims Is Authorized Pursuant To Bankruptcy Code Section 363**

22. Under Bankruptcy Code section 363(c), a debtor is authorized to operate its business in the ordinary course of business, including entering into transactions to use, sell, or lease property of the estate. Bankruptcy Code section 363(b)(1) empowers the bankruptcy court to allow a debtor to expend funds in the bankruptcy court's discretion outside the ordinary course of business. 11 U.S.C. § 363(b)(1). A debtor's decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of that debtor. See Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Co. (In re Chateaugay Corp.), 973 F.2d 141, 143 (2d Cir. 1992) (holding that a court determining an application pursuant to section 363(b) must find from the evidence a good business reason to grant such application).

23. The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)), appeal dismissed, 3 F.3d 49 (2d Cir. 1993). In fact, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct.” Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

Courts have consistently and appropriately been loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and will uphold a board's decisions as long as they are attributable to any "rational business purpose." Integrated Res. Inc., 147 B.R. at 656.

24. Here, because the relief requested in the Motion is necessary to the continued operation of the Debtor's business and will substantially aid in a successful reorganization, the transactions between the Debtor and such Foreign Vendors fall well within the parameters of section 363 of the Bankruptcy Code.

25. In addition, because the relief requested in the Motion contemplates payments to be made to Foreign Vendors who agree to provide goods or services on Customary Trade Terms, the transaction between the Debtor and such Foreign Vendors is further authorized by section 363 of the Bankruptcy Code as a sound exercise of the Debtor's business judgment.

26. Finally, as noted above, the Debtor has determined that the Foreign Vendors may take drastic action if the Foreign Vendor Claims are not paid. Indeed, non-U.S. entities have occasionally asserted that they are not subject to the jurisdiction of a United States bankruptcy court and, as such, not subject to the automatic stay provisions of 11 U.S.C. § 362(a). Although the Debtor would vigorously dispute any such contention, the Foreign Vendors could stop shipping goods or providing services to the Debtor on a timely basis, and foreign governmental and other entities may take action to seize assets of the Debtor or refuse to release shipments of goods to the Debtor, on the basis of such assertions. Irrespective of the accuracy of any Foreign Vendor's belief that the automatic stay does not apply to these actions, the consequences of such actions would be severe and irreparable. Simply put, absent the goods and services of the Foreign Vendors, the operations of the Debtor would be thrown into disarray.

Therefore, even if the Foreign Vendors' legal arguments are completely without merit, it is unlikely that the Debtor could seek and obtain orders from all the appropriate foreign courts forcing such Foreign Vendors to discontinue the offending activities within the time frame necessary to avoid irreparable harm to the Debtor's businesses – particularly since injunctive relief may not be available in all jurisdictions. Indeed, the impact on the Debtor's businesses would be disproportionate to the amount of the Foreign Vendor Claims paid.

27. Not only would such an eventuality drastically affect the Debtor's revenues, cash flows, and profitability, but it could also potentially lead to the Debtor's customers asserting sizeable damage claims against the Debtor's estate to the detriment of the Debtor's other creditors. The Debtor asserts that the amount of the Foreign Vendor Claims pales in comparison to the likely damage to the Debtor's businesses should the relief requested herein not be granted. Not only would the Debtor's other creditors not be harmed by payment of the Foreign Vendor Claims, but such creditors would also in fact benefit from this Courts' empowering the Debtor to make payments to the Foreign Vendors so as to achieve a smooth transition into bankruptcy with minimal disruption to its operations. In light of these factors, payment of the Foreign Vendor Claims is plainly in the best interests of the Debtor's estate and its creditors. Accordingly, even if payment of the Foreign Vendor Claims is deemed to be outside the ordinary course of business, there is a sufficient business justification for such payments. Thus, the Debtor respectfully submits that this Court should grant the requested relief under section 363 of the Bankruptcy Code.

B. Payment of the Foreign Vendor Claims Is Authorized Under Bankruptcy Code Sections 1107(a) and 1108

28. The Debtor, operating its business as a debtor in possession under Bankruptcy Code sections 1107(a) and 1108, is a fiduciary "holding the bankruptcy estate and

operating the business for the benefit of its creditors and (if the value justifies) equity owners.” In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” Id.

29. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” Id.; see also In re Mirant Corp., 296 B.R. 427, 429-30 (Bankr. N.D. Tex. 2003) (allowing debtors to pay claims “reasonably believe[d]” to be authorized under the CoServ test or whose payment was necessary “in the exercise of their business judgment . . . in order for [the d]ebtors to continue their respective businesses”). The CoServ court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” CoServ, 273 B.R. at 497. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor’s fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

Id. at 498.

30. Payment of the Foreign Vendor Claims undeniably meets each element of the CoServ court’s standard. The Debtor believes that if it does not satisfy the Foreign Vendor Claims, there is substantial risk of interruption to the Debtor’s operations. Such interruption of the Debtor’s operations could cost the Debtor’s estate millions of dollars in lost revenues. The harm and economic disadvantage that would stem from the failure of any of the Foreign Vendors

to timely ship goods and to provide services is grossly disproportionate to the amount of the prepetition claims that would have to be paid in order to ensure the continued supply of critical goods and services to the Debtor. Finally, with respect to each Foreign Vendor, the Debtor has examined other legal options short of payment of such creditors' prepetition claims and has determined that to avoid significant disruption of the Debtor's business operations there exists no practical or legal alternative to payment of the Foreign Vendor Claims. Therefore, payment of the Foreign Vendor Claims is consistent with the Debtor's fiduciary duties as a debtor in possession under Bankruptcy Code sections 1107(a) and 1108.

C. Section 105 of the Bankruptcy Code and the Doctrine of Necessity Supports Payment of the Foreign Vendor Claims

31. The proposed payments of prepetition Foreign Vendor Claims should be authorized pursuant to section 105 of the Bankruptcy Code and under the "doctrine of necessity." The Court's power to utilize the doctrine of necessity in chapter 11 cases derives from the Court's inherent equity powers and its statutory authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The United States Supreme Court first articulated the doctrine of necessity over a century ago, in Miltenberger v. Logansport Ry. Co., 106 U.S. 286 (1882), in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors and suppliers, among others, when such payments were necessary to preserve the receivership property and the integrity of the business in receivership. See id. at 309. The modern application of the doctrine of necessity is largely unchanged from the Court's reasoning in Miltenberger. See In re Lehigh & New Eng. Ry., 657 F.2d 570, 581-82 (3d Cir. 1981) ("[I]n order to justify payment under the 'necessity of payment' rule, a real and immediate

threat must exist that failure to pay will place the continued operation of the [debtor] in serious jeopardy.”).

32. The doctrine of necessity “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.” In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); see also In re Just for Feet, Inc., 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment); In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“[T]he court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.”); In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the chapter 11 process.”).

33. The doctrine of necessity is an accepted component of modern bankruptcy jurisprudence. See Just For Feet, 242 B.R. at 826 (approving payment of key inventory suppliers’ prepetition claims when such suppliers could destroy debtor’s business by refusing to deliver new inventory on eve of debtor’s key sales season); In re Payless Cashways, Inc., 268 B.R. 543, 546-47 (Bankr. W.D. Mo. 2001) (authorizing payment of critical prepetition suppliers’ claims when such suppliers agree to provide postpetition trade credit); see also In re Columbia Gas Sys., Inc., 171 B.R. 189, 191-92 (Bankr. D. Del. 1994); In re Ionosphere Clubs, Inc., 98 B.R. at 175-76.

34. As set forth above, maintaining access to the goods and services provided by the Foreign Vendors is absolutely critical to the Debtor’s reorganization efforts and is in the

best interests of the Debtor's estate and its creditors. The payment of the Foreign Vendor Claims is essential to assure that the Debtor continues to receive the goods and services necessary for the Debtor's business.

35. This Court and other courts have routinely granted the same or similar relief as requested in the Motion to chapter 11 debtors. See, e.g., In re A123 Sys., Inc., No. 12-12859 (KJC) (Bankr. D. Del. Nov. 8, 2012) (order authorizing the debtors to pay up to \$2.76 million in prepetition claims of foreign vendors); In re Pemco World Air Services, Inc., No. 12-10799 (MFW) (Bankr. D. Del. Apr. 3, 2012) (same, up to \$2.35 million in prepetition claims of foreign vendors); In re Hayes Lemmerz Int'l, Inc., No. 09-11655 (MFW) (Bankr. D. Del. May 13, 2009) (same, up to \$800,000); In re Aleris Int'l, Inc., No. 09-10478 (BLS) (Bankr. D. Del. Mar. 9, 2009) (same, up to \$3.5 million); In re Leiner Health Prods. Inc., No. 08-10446 (KJC) (Bankr. D. Del. Apr. 8, 2008) (same, up to \$11.9 million); In re Dura Auto. Sys., Inc., No. 06-11202 (KJC) (Bankr. D. Del. Nov. 21, 2006) (same, up to \$3.4 million); In re Gen. Mar. Corp., No. 11-15285 (ALG) (Bankr. S.D.N.Y. Dec. 15, 2011) (order authorizing the debtors to pay up to \$2.35 million in prepetition claims of foreign and critical vendors); In re Lyondell Chem. Co., Case No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 23, 2009) (order authorizing the debtors to pay up to \$350 million in prepetition claims of foreign vendors).

36. For the reasons set forth above, the Debtor submits that the relief requested in the Motion is in the best interest of the Debtor, its estate, creditors, stakeholders and other parties in interest, and therefore, should be granted.

RESERVATION OF RIGHTS

37. Nothing contained herein is or should be construed as: (a) an admission 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 to pay any claim; (d) an assumption or rejection of any

executory contract or unexpired lease pursuant to Bankruptcy Code section 365; or (e) otherwise affecting the Debtor's rights under Bankruptcy Code section 365 to assume or reject any executory contract with any party subject to the Motion.

IMMEDIATE RELIEF IS NECESSARY TO AVOID IMMEDIATE AND IRREPARABLE HARM

38. Bankruptcy Rule 6003 provides that the relief requested in the Motion may be granted if the "relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003; see also In re First NLC Fin. Servs., LLC, 382 B.R. 547, 549-50 (Bankr. S.D. Fla. 2008) (holding that Rule 6003 permits entry of retention orders on an interim basis to avoid irreparable harm). The Third Circuit has interpreted the language "immediate and irreparable harm" in the context of preliminary injunctions. In that context, the court has instructed that irreparable harm is a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh, 235 F. App'x 907, 910 (3d Cir. 2007) (citing Glasco v. Hills, 558 F.2d 179, 181 (3d Cir. 1977)). Furthermore, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. See, e.g., Acierno v. New Castle County, 40 F.3d 645, 653-55 (3d Cir. 1994). The Debtor submits that for the reasons already set forth herein, the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

39. The Debtor also requests that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As described above, the relief

that the Debtor seeks in the Motion is necessary for the Debtor to operate its businesses without interruption and to preserve value for its estate. Accordingly, the Debtor respectfully requests that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable, as the exigent nature of the relief sought herein justifies immediate relief.

NOTICE

40. Notice of the Motion will be given to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) counsel to the agent under the proposed debtor in possession financing; (iv) counsel to the agent for the Debtor's prepetition secured lenders; (v) the indenture trustee for each of the Debtor's secured and unsecured outstanding bond issuances; (vi) counsel to the unofficial committee of senior secured noteholders; (vii) the Internal Revenue Service; (viii) the Securities and Exchange Commission; (ix) the Banks; (x) the parties included on the Debtor's list of twenty (20) largest unsecured creditors; and (xi) all parties entitled to notice pursuant to Local Bankruptcy Rule 9013-1(m) (collectively, the "Notice Parties"). The Debtor submits that no other or further notice need be provided.

NO PRIOR REQUEST

41. No previous request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form annexed hereto, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
June 10, 2013

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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Proposed Counsel for Debtor and Debtor in Possession

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
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Debtor.¹ : **Related Docket No. _____**
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INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 363, 1107 AND 1108 AND FED. R. BANKR. P. 6003 AUTHORIZING DEBTOR TO PAY PREPETITION CLAIMS OF CERTAIN FOREIGN VENDORS AND SERVICE PROVIDERS

Upon the motion (the “Motion”)² of the Debtor for an order, pursuant to sections 105, 363, 1107, and 1108 of the Bankruptcy Code and Bankruptcy Rule 6003, authorizing, but not directing, the Debtor to pay, in the ordinary course of business, certain prepetition obligations to foreign vendors and other foreign suppliers of goods and services (collectively, the “Foreign Vendors”); 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 good 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 not otherwise 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. The Debtor is authorized, but not directed, to pay the Foreign Vendor Claims of Foreign Vendors that, to the best of the Debtor's knowledge, lack minimum contacts with the United States and, thus, may not be subject to the jurisdiction of this Court or the provisions of the Bankruptcy Code that otherwise protect the Debtor's assets and business operations, in the ordinary course of business, to the extent permitted by the Debtor's postpetition financing agreements, in an aggregate amount of up to \$1 million, without prejudice to seek additional relief on an emergency basis.

3. The Debtor is authorized, but not directed, in its absolute discretion, to settle some or all of the prepetition claims of the Foreign Vendors for less than their face amount without further notice or hearing.

4. In return for payment of the Foreign Vendor Claims in the ordinary course of business, unless otherwise waived by the Debtor in its sole discretion, the Foreign Vendors are hereby required to continue to provide goods and services to the Debtor on the most favorable terms in effect between such supplier and the Debtor in the 180 days prior to the Petition Date or on such other favorable terms as the Debtor and the Foreign Vendor may otherwise agree ("Customary Trade Terms"). The Customary Trade Terms shall apply for at least one year following the date of the agreement and as long as the Debtor agrees to pay for such goods in accordance with such terms.

5. If any Foreign Vendor accepts payment on account of a prepetition obligation of the Debtor and thereafter does not continue to provide services to the Debtor on Customary Trade Terms, any payments made shall be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and shall be recoverable by the Debtor in cash upon

written request. Upon recovery by the Debtor, the claim shall be reinstated as a prepetition claim in the amount so recovered. The Debtor is hereby, authorized but not directed, to obtain written verification, before issuing payment to a Foreign Vendor, that such Foreign Vendor will, if relevant, continue to provide goods and services to the Debtor on Customary Trade Terms for the remaining term of the Foreign Vendor's agreement with the Debtor; provided, however, that the absence of such written verification will not limit the Debtor's rights hereunder.

6. All applicable banks and other financial institutions are authorized, but not directed, to rely on the Debtor's direction to pay amounts in accordance with this Order provided that sufficient funds are available in the applicable accounts to make the payments.

7. 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.

8. To the extent there is any inconsistency between the terms of the interim or final order approving the Debtor's proposed postpetition financing, if and when entered, and this Order, the terms of the interim or final order approving the proposed postpetition financing, as applicable, shall govern.

9. Nothing herein shall be construed to limit, or in any way affect, the Debtor's ability to dispute any Foreign Vendor Claim.

10. The authorization granted hereby to pay Foreign Vendor Claims shall not create any obligation on the part of the Debtor or its officers, directors, attorneys, or agents to

pay the Foreign Vendor Claims. None of the foregoing persons shall have any liability on account of any decision by the Debtor not to pay a Foreign Vendor Claim. Nothing contained in this Order shall be deemed to increase, reclassify, elevate to an administrative expense status or otherwise affect the Foreign Vendor Claims to the extent they are not paid.

11. No claimant who receives payment on account of a Foreign Vendor Claim is permitted to file or perfect a lien on account of such claim, and any such claimant shall take all necessary action to remove any existing lien relating to such claim, even if the lien is against property of a non-Debtor.

12. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order shall create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

13. Neither the provisions contained herein, nor any actions or payments made by the Debtor pursuant to this Order, shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtor may have to subsequently dispute such obligation on any ground that applicable law permits.

14. Nothing in this Order or the Motion shall be deemed to constitute assumption or adoption of any agreement under section 365 of the Bankruptcy Code. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

15. The 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.

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

17. The Debtor is hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

18. The Debtor shall serve notice of the Motion (to the extent not already provided) and entry of this Order on the Notice Parties in accordance with Local Rule 9013-1(m). The notice shall provide that any objections to the relief granted in this Order must be filed with the Court and served on counsel for the Debtor no later than seven days prior to the final hearing with respect to the Motion (the "Objection Deadline"). In the event that no objections to this Order are received by the Objection Deadline, the Debtor's counsel shall file a certification of counsel to that effect attaching a final form of order. The final hearing with respect to the Motion shall be held on _____, 2013, at __:____ .m.

19. 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
_____, 2013

UNITED STATES BANKRUPTCY JUDGE

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

:

Debtor.¹ : **Related Docket Nos.** _____

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FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105, 363, 1107 AND 1108 AND FED. R. BANKR. P. 6003 AUTHORIZING DEBTOR TO PAY PREPETITION CLAIMS OF CERTAIN FOREIGN VENDORS AND SERVICE PROVIDERS

Upon the motion (the “Motion”)² of the Debtor for an order, pursuant to sections 105, 363, 1107, and 1108 of the Bankruptcy Code and Bankruptcy Rule 6003, authorizing, but not directing, the Debtor to pay, in the ordinary course of business, certain prepetition obligations to foreign vendors and other foreign suppliers of goods and services (collectively, the “Foreign Vendors”); 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 good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is GRANTED as set forth herein.

¹ The last four digits of the Debtor’s taxpayer identification number are 2730. The Debtor’s corporate headquarters is 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 Motion.

2. The Debtor is authorized, but not directed, to pay the Foreign Vendor Claims of Foreign Vendors that, to the best of the Debtor's knowledge, lack minimum contacts with the United States and, thus, may not be subject to the jurisdiction of this Court or the provisions of the Bankruptcy Code that otherwise protect the Debtor's assets and business operations, in the ordinary course of business, to the extent permitted by the Debtor's postpetition financing agreements, in an aggregate amount of up to \$2 million, without prejudice to seek additional relief on an emergency basis.

3. The Debtor is authorized, but not directed, in its absolute discretion, to settle some or all of the prepetition claims of the Foreign Vendors for less than their face amount without further notice or hearing.

4. In return for payment of the Foreign Vendor Claims in the ordinary course of business, unless otherwise waived by the Debtor in its sole discretion, the Foreign Vendors are hereby required to continue to provide goods and services to the Debtor on the most favorable terms in effect between such supplier and the Debtor in the 180 days prior to the Petition Date or on such other favorable terms as the Debtor and the Foreign Vendor may otherwise agree ("Customary Trade Terms"). The Customary Trade Terms shall apply for at least one year following the date of the agreement and as long as the Debtor agrees to pay for such goods in accordance with such terms.

5. If any Foreign Vendor accepts payment on account of a prepetition obligation of the Debtor and thereafter does not continue to provide services to the Debtor on Customary Trade Terms, any payments made shall be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and shall be recoverable by the Debtor in cash upon written request. Upon recovery by the Debtor, the claim shall be reinstated as a prepetition claim

in the amount so recovered. The Debtor is hereby, authorized but not directed, to obtain written verification, before issuing payment to a Foreign Vendor, that such Foreign Vendor will, if relevant, continue to provide goods and services to the Debtor on Customary Trade Terms for the remaining term of the Foreign Vendor's agreement with the Debtor; provided, however, that the absence of such written verification will not limit the Debtor's rights hereunder.

6. All applicable banks and other financial institutions are authorized, but not directed, to rely on the Debtor's direction to pay amounts in accordance with this Order provided that sufficient funds are available in the applicable accounts to make the payments.

7. 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.

8. To the extent there is any inconsistency between the terms of the interim or final order approving the Debtor's proposed postpetition financing, if and when entered, and this Order, the terms of the interim or final order approving the proposed postpetition financing, as applicable, shall govern.

9. Nothing herein shall be construed to limit, or in any way affect, the Debtor's ability to dispute any Foreign Vendor Claim.

10. The authorization granted hereby to pay Foreign Vendor Claims shall not create any obligation on the part of the Debtor or its officers, directors, attorneys, or agents to pay the Foreign Vendor Claims. None of the foregoing persons shall have any liability on

account of any decision by the Debtor not to pay a Foreign Vendor Claim. Nothing contained in this Order shall be deemed to increase, reclassify, elevate to an administrative expense status or otherwise affect the Foreign Vendor Claims to the extent they are not paid.

11. No claimant who receives payment on account of a Foreign Vendor Claim is permitted to file or perfect a lien on account of such claim, and any such claimant shall take all necessary action to remove any existing lien relating to such claim, even if the lien is against property of a non-Debtor.

12. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in this Order shall create, nor is it intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

13. Neither the provisions contained herein, nor any actions or payments made by the Debtor pursuant to this Order, shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtor may have to subsequently dispute such obligation on any ground that applicable law permits.

14. Nothing in this Order or the Motion shall be deemed to constitute assumption or adoption of any agreement under section 365 of the Bankruptcy Code. Notwithstanding the relief granted herein and any actions taken hereunder, nothing herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

15. The 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.

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

17. The Debtor is hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

18. 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
_____, 2013

UNITED STATES BANKRUPTCY JUDGE