

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 : **Hrg. Date: November 14, 2013 at 10:00 a.m. (Eastern)**
 : **Obj. Due: November 7, 2013 at 4:00 p.m. (Eastern)**
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**DEBTOR’S OMNIBUS MOTION FOR ENTRY OF AN ORDER
AUTHORIZING REJECTION OF THE BISMARCK LEASE AND
THE FLORENCE LEASE AS OF THE SURRENDER DATE**

Exide Technologies (“Exide” or the “Debtor”) hereby moves (the “Motion”) this Court for entry of an order authorizing the Debtor to reject each of the Bismarck Lease (as defined below) and the Florence Lease (as defined below) as of the Surrender Date (as defined below). In further support of the Motion, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue of this 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 sections 105(a) and 365 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

3. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, the Debtor

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

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 June 10, 2013 (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").

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

6. On June 18, 2013, the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an Official Committee of Unsecured Creditors (the "Creditors' Committee") in the Chapter 11 Case pursuant to Bankruptcy Code section 1102. No trustee or examiner has been appointed in the Chapter 11 Case.

B. The Florence Lease, Bismarck Lease, Florence Facility, and Bismarck Facility

7. On March 28, 2005, the Debtor entered into a lease (as amended, the "Florence Lease") with Carolina Commercial Holdings, LLC a South Carolina limited liability company (the "Florence Landlord"). The premises of the Florence Lease (the "Florence Premises"), located at 1214-A W. Interstate Blvd., Florence, SC 29501 (the "Florence Facility") has a monthly rent of \$3,750.00 and was used as a distribution center and collection point.

8. In June 2009, the Debtor entered into a lease (as amended, the "Bismarck Lease") with Saratoga Properties, LLC, a North Dakota company (the "Bismarck Landlord"). The premises of the Bismarck Lease (the "Bismarck Premises," and together with the Florence Premises, the "Premises"), located at 3705 Saratoga Avenue, Bismarck, ND 58503 (the

“Bismarck Facility,” and together with the Florence Facility, the “Facilities”) has a monthly rent of \$3,250.00 and was used as a distribution center and collection point.

9. The Debtor leased each of the Facilities for the purpose of receiving, charging, storing, shipping, and selling batteries to its resale customer base. The Facilities also served as collection points for battery cores. Due to a volume downturn at each of the Facilities and the successful transition of business to surrounding areas, the Debtor no longer needs either Facility. The Debtor intends to vacate each Premises and remove all property from the Premises² by October 31, 2013. The Bismarck Lease, pursuant to its terms, is scheduled to terminate on June 30, 2015 and the Florence Lease, pursuant to its terms, is scheduled to terminate on February 28, 2014.

RELIEF REQUESTED

10. By the Motion, the Debtor seeks entry of an order authorizing the Debtor to reject each of the Bismarck Lease and the Florence Lease as of the Surrender Date.

BASIS FOR RELIEF

11. As part of the Debtor’s efforts to maximize the value of its estate, the Debtor is working to eliminate unnecessary administrative burdens. The Debtor has determined that its estate would be better served by avoiding the burdens associated with the Debtor’s continued performance under either the Bismarck Lease or the Florence Lease. Each Facility is

² The Debtor does not believe that any of its property remains at either the Bismarck Facility or the Florence Facility. However, out of an abundance of caution, the Debtor seeks (a) authority under Bankruptcy Code sections 105(a) and 554 to abandon (x) to the Bismarck Landlord any and all property (the “Bismarck Abandoned Property”) as of the date the respective Bismarck Lease is rejected and (y) to the Florence Landlord any and all property (the “Florence Abandoned Property,” and together with the Bismarck Abandoned Property, the “Abandoned Property”) as of the date the respective Florence Lease is rejected; and (b) authorization for each the Bismarck Landlord and the Florence Landlord, in its sole discretion and without further notice, to dispose of such respective Abandoned Property, without liability to the Debtor or any third parties claiming an interest in such respective Abandoned Property.

vacant and not part of the Debtor's ongoing business plan. Also, given the monthly rent amount and term of the leases, attempting to sublease or conducting a full market analysis with respect to the Facilities does not make economic sense, particularly given that prior to rejection the Debtor would be responsible to cover rent to the extent each premises is unoccupied. Accordingly, it is not efficient for the Debtor to make ongoing payments of \$7,000 per month for property that the Debtor is not currently using or for which the Debtor does not have a use.

12. Moreover, the Debtor is currently in the process of surrendering possession of the each Premises to the respective landlord. As noted, the Debtor has vacated each Premises and, through notice of the Motion to the Bismarck Landlord and the Florence Landlord, has unequivocally notified each landlord of its intent to abandon each Premises. Furthermore, the Debtor will return the respective keys to the Bismarck Landlord and Florence Landlord subsequent to filing the Motion and prior to October 31, 2013. The Debtor moves to reject each of the Bismarck Lease and the Florence Lease as of October 31, 2013 (the "Surrender Date").

APPLICABLE AUTHORITY

A. Rejection of the Florence Bismarck Leases is a Sound Exercise of the Debtor's Judgment

13. Bankruptcy Code section 365(a) provides that a debtor in possession "subject to the court's approval, may . . . reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a).

14. A debtor's determination to reject an executory contract is governed by the "business judgment" standard. In re HQ Global Holdings, Inc., 290 B.R. 507, 511 (Bankr. D. Del. 2003) (stating that a debtor's decision to reject an executory contract is governed by the

business judgment standard and can only be overturned if the decision was the product of bad faith, whim, or caprice).

15. Once the debtor articulates a valid business justification, “[t]he business judgment rule ‘is a presumption that in making a business decision 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)).

16. The business judgment rule has vitality in chapter 11 cases and shields a debtor’s management from judicial second-guessing. See Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”).

17. As set forth above, the Debtor clearly has satisfied the “business judgment” standard for rejecting the Bismarck Lease and the Florence Lease. The Bismarck Lease and the Florence Lease are financially burdensome and unnecessary to the Debtor. Moreover, the Debtor has reviewed each lease and has determined that given the monthly rent amount and term of the leases, attempting to sublease or conducting a full market analysis with respect to the Facilities does not make economic sense, particularly given that prior to rejection the Debtor would be responsible to cover rent to the extent the property is unoccupied. Accordingly, the Debtor has determined that the Bismarck Lease and Florence Lease each constitutes an unnecessary drain on the Debtor’s cash flows and, therefore, rejection of the Bismarck Lease and Florence Lease reflects the Debtor’s exercise of sound business judgment.

18. The Debtor also submits that rejection of each lease as of the Surrender Date is appropriate. Courts in this district have routinely set the rejection date of unexpired leases as of the date that the non-debtor party to the lease was informed of the debtor's "unequivocal intent to reject the leases." In re Fleming Co., Inc., 304 B.R. 85, 96 (Bankr. D. Del. 2004). Under Bankruptcy Code section 365, the Debtors' only duty upon rejection is to surrender the premises. See 11 U.S.C. § 365(d)(4) (providing that, upon rejection, "the trustee shall immediately surrender [the] nonresidential real property to the lessor"). "Surrender" is not defined in the Bankruptcy Code and has been interpreted by courts differently depending on the facts and circumstances.

19. Where the debtor is a lessee and no sub-tenancy exists,³ courts have concluded that providing notice of rejection to the landlord and vacating the premises constitutes surrender of the premises. Adelphia Bus. Solutions, Inc. v. Abnos, 482 F.3d 602, 608 (2d Cir. 2007) (noting that the bankruptcy court properly considered the fact that the debtor vacated the premises); Chatlos Sys., Inc. v. Kaplan, 147 B.R. 96, 100 (D. Del. 1992) (noting that surrender is effective if the debtor/lessee in possession of the premises provides notice, vacates the premises and turns the premises over to the landlord).

20. As of the Surrender Date, the Debtor will have vacated each Premises, unequivocally notified each landlord of its intent to abandon the respective Premises, and returned the keys to the respective landlord. The Debtor submits that, in light of the circumstances, rejection of the Bismarck Lease and Florence Lease as of the Surrender Date is

³ Upon information and belief, neither the Bismarck Lease nor the Florence Lease involve subleases. Out of an abundance of caution, however and to the extent there are any, any subleases of the Premises will be likewise rejected upon rejection of the Bismarck Lease or the Florence Lease. See Chatlos Sys., Inc. v. Kaplan, 147 B.R. 96, 100 (D. Del. 1992) (holding that rejection of a primary lease results in deemed rejection of any sublease).

appropriate and equitable. See April 15, 1998 Transcript at 35, In re Namco Cyberertainment, Inc., Case No. 98-00173 (PJW) (Bankr. D. Del. Apr. 15, 1998) (citing the factors which must be present for rejection of a lease as of the date of service of the lease rejection motion).

Furthermore, this Court has previously set the rejection date for leases as of when the Debtor unequivocally notified the landlord of its intent to abandon the premises, and returned the keys to the landlord. See Order Authorizing (I) Rejection of Shreveport Lease and Shreveport Contracts as of the Surrender Date and (II) Abandonment of Personal Property (Docket No. 355). The rejection of the Bismarck Lease and the Florence Lease as of the Surrender Date is therefore warranted.

RESERVATION OF RIGHTS

21. 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 right 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 other than the rejection of the Bismarck Lease and Florence Lease pursuant to Bankruptcy Code section 365; or (e) otherwise affect the Debtor's rights under Bankruptcy Code section 365 to assume or reject any executory contract or unexpired lease with any party subject to the Motion.

NOTICE

22. Notice of the Motion will be given to: (i) the Office of the U.S. Trustee; (ii) counsel to the agent under the debtor in possession financing; (iii) counsel to the agent for the Debtor's prepetition secured lenders; (iv) the indenture trustee for each of the Debtor's secured and unsecured outstanding bond issuances; (v) counsel to the unofficial committee of senior

secured noteholders; (vi) counsel to the Creditors' Committee; (vii) the Bismarck Landlord; (viii) the Florence Landlord; and (ix) all parties entitled to notice pursuant to Bankruptcy Rule 2002.

The Debtor submits that no other or further notice need be provided.

NO PRIOR REQUEST

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

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CONCLUSION

WHEREFORE, the Debtor respectfully requests that this 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
October 24, 2013

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

/s/ Anthony W. Clark

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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 (KJC)

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Debtor.¹ : **Hrg. Date: Nov. 14, 2013 at 10:00 a.m. (Eastern)**

: **Obj. Due: Nov. 7, 2013 at 4:00 p.m. (Eastern)**

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**NOTICE OF DEBTOR’S OMNIBUS MOTION FOR ENTRY OF AN ORDER
AUTHORIZING REJECTION OF THE BISMARCK LEASE AND
THE FLORENCE LEASE AS OF THE SURRENDER DATE**

PLEASE TAKE NOTICE that the debtor and debtor in possession in the above-captioned bankruptcy case (the “Debtor”) filed today the attached Debtor’s Omnibus Motion For Entry Of An Order Authorizing Rejection Of The Bismarck Lease And The Florence Lease As Of The Surrender Date (the “Motion”).

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held on **November 14, 2013 at 10:00 a.m. (Eastern)** before the Honorable Kevin J. Carey, United States Bankruptcy Judge for the District of Delaware, in the United States Bankruptcy Court for the District of Delaware, 5th Floor, Courtroom 5, 824 North Market Street, Wilmington, Delaware 19801 (“Hearing”).

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion or the relief requested therein must be made in writing, filed with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), 824 Market Street, Wilmington, Delaware

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

19801, and served so as to be received by the following parties no later than **November 7, 2013**

at 4:00 p.m. (Eastern):

(i) the Debtor, Exide Technologies, 13000 Deerfield Parkway, Building 200, Milton, Georgia 30004, Attn: Phillip A. Damaska;

(ii) counsel to the Debtor, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036, Attn: Kenneth S. Ziman, Esq. and J. Eric Ivester, Esq. and One Rodney Square, P.O. Box 636, Wilmington, Delaware 19899-0636, Attn: Anthony W. Clark, Esq. and 155 N. Wacker Drive, Chicago, Illinois 60606-1720, Attn: James J. Mazza, Jr.;

(iii) counsel to the agent under the debtor in possession financing, Davis, Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Damian S. Schaible, Esq. and Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801, Attn: Mark D. Collins, Esq.;

(iv) counsel to the agent for the Debtor's prepetition secured lenders, Greenberg Traurig, LLP, 3333 Piedmont Road NE, Suite 2500, Atlanta, Georgia 30305, Attn: David B. Kurzweil, Esq. and 1007 N. Orange St., Suite 1200, Wilmington, Delaware 19801, Attn: Dennis A. Meloro, Esq.;

(v) the indenture trustee for the Debtor's secured bond issuances, Wells Fargo Bank, N.A., 150 East 42nd Street, 40th Floor, New York, New York 10017, Attn: James R. Lewis and Foley & Lardner LLP, 321 North Clark Street, Suite 2800, Chicago, Illinois 60654, Attn: Mark F. Hebbeln, Esq.;

(vi) the indenture trustee for the Debtor's unsecured bond issuances, U.S. Bank National Association, Global Corporate Trust Services, 60 Livingston Ave., EP-MN-WS1D, St. Paul, Minnesota 55107, Attn: Cindy Woodward and Arent Fox LLP, 1675 Broadway, New York, New York 10019, Attn: Andrew Silfen, Esq.;

(vii) counsel to the unofficial committee of senior secured noteholders, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Alice Belisle Eaton, Esq. and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 King Street, Wilmington, Delaware 19801, Attn: Pauline K. Morgan, Esq.;

(viii) the Office of the United States Trustee for the District of Delaware, Office of the United States Trustee, Room 2207, Lockbox 35, 844 North King Street, Wilmington, Delaware 19801, Attn: Mark S. Kenney, Esq.; and

(ix) counsel to the official committee of unsecured creditors, Lowenstein Sandler LLP, 65 Livingston Avenue, Roseland, New Jersey 07068, Attn: Kenneth A. Rosen, Esq. and Sharon L. Levine, Esq. and 1251 Avenue of the Americas, New York, New York 10020, Attn:

Gerald C. Bender, Esq. and Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Suite 1600, Wilmington, Delaware 19801, Attn: Robert J. Dehney, Esq.

Only objections made in writing and timely filed and received will be considered by the Bankruptcy Court at the Hearing.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED AND RECEIVED IN ACCORDANCE WITH THE ABOVE PROCEDURES, THE RELIEF REQUESTED IN THE MOTION MAY BE GRANTED WITHOUT FURTHER NOTICE OR HEARING.

Dated: Wilmington, Delaware
October 24, 2013

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

/s/ Anthony W. Clark

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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 (KJC)

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Debtor.¹ : **Related Docket No.** ____

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**ORDER AUTHORIZING REJECTION OF THE BISMARCK LEASE
AND THE FLORENCE LEASE AS OF THE SURRENDER DATE**

Upon the Debtor’s motion (the “Motion”)² for entry of an order (this “Order”) authorizing the Debtor to reject (i) an unexpired lease of nonresidential real property located in Bismarck, ND (the “Bismarck Lease”) and (ii) an unexpired lease of nonresidential real property located in Florence, SC (the “Florence Lease”); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, its stakeholders and other parties in interest; and it appearing that proper and adequate notice of the hearing to consider the relief requested in the Motion having been provided to the parties listed therein and no further notice being necessary; and the legal and factual bases set forth in the Motion establishing just and sufficient cause to grant the relief requested therein; 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.
2. The Bismarck Lease is hereby rejected as of October 31, 2013.

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

² All capitalized terms used but otherwise not defined herein shall have the meanings set forth in the Motion.

3. The Bismarck Landlord is entitled to immediate possession of the Bismarck Premises.

4. The Florence Lease is hereby rejected as of October 31, 2013.

5. The Florence Landlord is entitled to immediate possession of the Florence Premises.

6. Pursuant to Bankruptcy Code section 554, the Debtor is authorized to abandon any and all Bismarck Abandoned Property located at the Bismarck Premises, and such Bismarck Abandoned Property is deemed abandoned to the Bismarck Landlord.

7. Pursuant to Bankruptcy Code section 554, the Debtor is authorized to abandon any and all Florence Abandoned Property located at the Florence Premises, and such Florence Abandoned Property is deemed abandoned to the Florence Landlord.

8. The Debtor reserves its right to assume, assign, or reject other executory contracts or leases, and nothing herein shall be deemed to affect such rights.

9. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order and in accordance with the Motion.

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

Date: Wilmington, Delaware
_____, 2013

The Honorable Kevin J. Carey
UNITED STATES BANKRUPTCY JUDGE