

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X

In re:	:	Chapter 11
	:	
EXIDE TECHNOLOGIES,	:	Case No. 13-11482
	:	
Debtor. ¹	:	
	:	

----- X

**DEBTOR’S MOTION FOR ORDER UNDER
11 U.S.C. §§ 105(a), 363(b), AND 506(b) AUTHORIZING THE DEBTOR TO PAY
CERTAIN PREPETITION CLAIMS OF MECHANICS AND MATERIALMEN IN
SATISFACTION OF PERFECTED OR POTENTIAL MECHANICS’,
MATERIALMEN’S, OR SIMILAR LIENS OR INTERESTS**

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(a), 363(b), and 506(b) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), authorizing, but not directing, the Debtor to pay certain prepetition obligations of contractors, subcontractors, mechanics, or materialmen (the “Mechanics and Materialmen”) in satisfaction of perfected or potential mechanics’ liens, materialmen’s liens, or similar liens against or interests in the Debtor’s property (collectively, the “Liens and Interests”) as provided herein. 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

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.

support of the Motion, the Debtor, by and through its proposed undersigned counsel, respectfully represents:

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, 506, 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.

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.

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.

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 65 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

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.

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

RELIEF REQUESTED

11. By the Motion, the Debtor requests authorization to pay the prepetition claims of certain Mechanics and Materialmen for certain prepetition goods and services (the “Goods/Services”) provided to the Debtor in full and final satisfaction of claims giving rise to potential Liens and Interests (the “Lien Claims”). The Debtor estimates that the aggregate amount of the Lien Claims that may be paid pursuant to the Motion is approximately \$5.2 million on an interim basis and \$10.4 million on a final basis.

12. The Debtor proposes that all payments (the “Payments”) on Lien Claims made under the Motion be subject to the following conditions:

- (a) The Debtor, in its sole discretion, will determine which Mechanics and Materialmen, if any, are entitled to Payments under the Motion, subject to the provisions below;
- (b) The Mechanic or Materialman must be engaged in providing Goods/Services with respect to a project that involves the Debtor’s property and is incomplete as of the Petition Date;
- (c) The Debtor must conclude that (i) the Goods/Services of the Mechanic or Materialman at issue are essential to the proper and/or timely completion of the project; (ii) the Mechanic or Materialman will refuse to continue providing such Goods/Services if the Lien Claims are not paid; and (iii) the Debtor’s facilities and/or operations will be adversely affected if the project is not properly and/or timely completed;
- (d) As a condition to receiving a Payment, the Mechanic or Materialman must agree to continue providing Goods/Services to the Debtor as necessary to complete the project on terms at least as

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

favorable as the Mechanic or Materialman made available to the Debtor prior to the Petition Date; and

- (e) Prior to making a Payment to a Mechanic or Materialman under the Motion, the Debtor may, in its absolute discretion, settle all or some of the Lien Claims of the Mechanics or Materialmen for less than their face amount without further notice or hearing.

13. The Debtor further requests entry of an order authorizing 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 there are sufficient good funds standing to the Debtor’s credit in the applicable accounts to make the payments.

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

BASIS FOR RELIEF

15. As set forth in the Debtor’s Critical Vendor Motion,⁷ filed concurrently herewith, the Debtor went through painstaking efforts to ensure the stability of its supply chain prior to commencing the Chapter 11 Case—including establishing parameters for a narrowly-tailored mechanics and materialmen program to ensure the continued supply of critical goods and services and preservation of its liquidity during the Chapter 11 Case. In the ordinary course of the Debtor’s businesses, the Debtor employs numerous Mechanics and Materialmen to provide Goods/Services that give rise to a right to payment that could become secured by Liens and Interests. In certain cases, such Goods/Services are needed in connection with projects that

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.

were in process as of the Petition Date. Such projects involve, among other things, (a) performance of certain intermediary manufacturing processes on Debtor's materials and equipment prior to delivery to the Debtor, (b) repair or maintenance work necessary to insure the safety of the premises for employees and visitors or the continued functioning of plant machinery or equipment, and (c) repair of maintenance compliance with federal regulations and quality controls. Failure to properly and timely complete the projects could adversely affect the Debtor's financial condition and operations.

16. The Debtor believes that the Mechanics and Materialmen involved in such pending projects may refuse to continue to provide Goods/Services if their Lien Claims cannot be paid due to the chapter 11 filing. In such situations, the Debtor must have the ability to pay the Lien Claims to insure the proper and timely completion of the projects, thereby avoiding harm to the Debtor's estate. Moreover, the Debtor believes that the cost to replace the Goods/Services of the Mechanics and Materialmen outweighs any prepetition amounts owed to them. Indeed, as part of its rigorous protocol, the Debtor, with Alvarez & Marsal, after conducting an assessment of the value of goods and raw materials, concluded that the Mechanics and Materialmen are in possession of the Debtor's materials (e.g., lead, battery cores, tools, etc.) that are worth nearly double the prepetition amounts they are owed.⁸

⁸ In general, the Materialmen are owed approximately \$7 million and the Mechanics are owed approximately \$3.4 million. The Materialmen typically process the Debtor's cores into reusable raw materials, which could be sold to the Debtor's competitors if the Materialmen's claims were not satisfied. In addition, the Mechanics are currently engaged in projects ensuring that the Debtor's facilities are environmentally sound, for which they could attach mechanic's liens to the Debtor's property.

APPLICABLE AUTHORITY

A. The Lien Claims' Status as Secured Claims Justifies Payment

17. The Debtor's failure to pay the Lien Claims likely would result in the Mechanics and Materialmen having a right to assert Liens or Interests against the Debtor's properties. Pursuant to Bankruptcy Code section 362(b)(3), acts to perfect such Liens or Interests, to the extent consistent with Bankruptcy Code section 546(b), are expressly excluded from the automatic stay otherwise established by Bankruptcy Code section 362(a). Moreover, under Bankruptcy Code section 546(b), a debtor's lien avoidance powers "are subject to any generally applicable law that ... permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection." Therefore, notwithstanding the automatic stay established by Bankruptcy Code section 362, many of the Mechanics and Materialmen may perfect and assert Liens or Interests against the Debtor's property. Thus, they would hold secured claims under Bankruptcy Code section 506(b) that would, in any event, be required to be paid in full under Bankruptcy Code section 1129(b)(2)(A).

B. This Court May Rely on the "Necessity of Payment" Doctrine and Its General Equitable Powers To Grant the Motion

18. The proposed payments of the Lien Claims should be authorized under Bankruptcy Code section 105(a) and under the "doctrine of necessity." This 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 310. The modern application of the doctrine of necessity is largely unchanged from the Court’s reasoning in Miltenberger. See In re Lehigh & New England Ry. Co., 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 [debtor’s] continued operation . . . in serious jeopardy.”).

19. The doctrine of necessity “recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.” In re Ionosphere Clubs, Inc., 98 B.R. at 176; 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.”).

20. The doctrine of necessity is a widely 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.

21. Payment of the Lien Claims is vital to the Debtor's ability to achieve its chapter 11 objectives and to maximize the value of the estate. Indeed, the costs to replace the Goods/Services provided by the Mechanics and Materialmen outweighs the total amount of the Lien Claims. Hence, this Court should exercise its equitable powers to grant the relief requested in the Motion.

C. This Court May Authorize Payment of the Lien Claims Under Bankruptcy Code Section 363(b)

22. To the extent that payment of prepetition obligations would be deemed to constitute a use of property outside the ordinary course of business, an additional basis for authorizing payment of the Lien Claims is found under Bankruptcy Code section 363(b)(1). Bankruptcy Code section 363(b)(1) permits a debtor in possession to use property of the estate "other than in the ordinary course of business" after notice and a hearing. 11 U.S.C. § 363(b)(1). Courts in this and other circuits have indicated that the use of property of the estate outside of the ordinary course of business is proper where the debtor in possession has articulated a good business reason for such use. See, e.g., In re MPC Computers, LLC, Case No. 08-12667 (PJW) (Bankr. D. Del. Nov. 10, 2008) (authorizing, pursuant to Section 363, the payment of prepetition claims of some suppliers); In re Conseco, Inc., Case No. 02-49672 (CAD) (Bankr. N.D. Ill. Jan. 14, 2003); Armstrong World Indus., Inc. v. James A. Phillips, Inc., 29 B.R. 391, 397 (S.D.N.Y. 1983) (district court affirmed bankruptcy court's decision under Section 363 authorizing contractor to pay prepetition claims of some suppliers who were potential lien claimants); In re Global Crossing Ltd., 295 B.R. 726, 743 (Bankr. S.D.N.Y. 2003) ("[A] § 363 application

requires a showing that there is a ‘good business reason to grant such an application.’”) (quoting Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983)).

23. Where a debtor has articulated a valid business justification for a proposed transaction, courts generally apply the business judgment rule in evaluating such transaction. Lange v. Schropp (In re Brook Valley VII, Joint Venture), 496 F.3d 892, 900 (8th Cir. 2007) (“In general, courts do not second-guess business decisions made in good faith.”); Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (“The 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 was in the best interests of the company.’”) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)).

24. The business judgment rule has vitality in chapter 11 cases. See Lange, 496 F.3d at 900; Integrated Res., 147 B.R. at 656; see also 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.”). The Debtor submits that the payment of the Lien Claims is essential to the business purpose of maintaining the continuation of projects that are necessary to ensure the safety and continued operation of the Debtor’s premises and facilities. As such, the Court should approve the payment of Lien Claims as a valid exercise of the Debtor’s business judgment.

25. Additionally, where, as here, the relief at issue involves a request impacting the trade terms between the Debtor and the vendor, the relief may, where the

appropriate showing has been made, be approved pursuant to Bankruptcy Code Section 364. See In re UAL Corp., Case No. 02-48191 (Bankr. N.D. Ill. Dec. 11, 2002) (essential trade motion relying upon Bankruptcy Code Section 363 is “completely consistent with the Bankruptcy Code;” payments to critical trade vendors have further support when debtor seeks “the extension of credit under section 364 on different than usual terms, terms that might include the payment of a prepetition obligation”).

26. Paying the Lien Claims is crucial to the Debtor’s business and reorganization. As indicated above, many of the Mechanics and Materialmen provide Goods/Services that are needed in connection with pending projects that are critical to the normal operation of the Debtor’s business and would cost more to replace than paying the Lien Claims. Moreover, absent the requested relief, the Debtor believes that these Mechanics and Materialmen may refuse to continue to provide Goods/Services and thereby prevent the proper and timely completion of such critical projects. Thus, the Debtor requests that the Court authorize the payment of the Lien Claims in the ordinary course of business in order to ensure that the Debtor continues to receive the essential Goods/Services of the Mechanics and Materialmen.

D. The Court Should Authorize Payment of the Lien Claims as a Valid Exercise of the Debtor’s Fiduciary Duties

27. Authority for such payments also may be found in Bankruptcy Code sections 1107(a) and 1108. The Debtor, operating its businesses as debtor in possession under Bankruptcy Code sections 1107(a) and 1108, are fiduciaries “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.

28. The CoServ court has 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. That 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,” id., and also when the payment was to “sole suppliers of a given product.” Id. at 498. 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.

29. For the reasons discussed herein, it is evident that payment of the Lien Claims is appropriate under the circumstances and necessary to the Debtor’s ability to achieve its chapter 11 objectives. The Debtor’s operations require that they continue to receive the Goods/Services from and engage in other business relationships with the Mechanics and Materialmen without interruption. Without payment of the Lien Claims, the Mechanics and Materialmen not only may refuse to continue to provide the Goods/Services to and engage in other business relationships with the Debtor, but also may initiate actions against the Debtor to enforce the Liens or otherwise interfere with the Debtor’s day-to-day operations. This would have a dramatic negative impact on the Debtor’s businesses. Indeed, the impact on the Debtor’s businesses would be disproportionate to the amount of the Lien Claims paid. Hence, the Debtor

respectfully submits that the exercise of the Court's equitable powers to grant the relief requested in the Motion would be appropriate.

30. 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., Case No. 12-12859 (KJC) (Bankr. S.D.N.Y. Nov. 8, 2012); In re Patriot Coal Corp., Case No. 12-12900 (SCC) (Bankr. S.D.N.Y. Aug. 2, 2012); In re Blitz U.S.A., Inc., Case No. 11-130603 (PJW) (Bankr. D. Del. Nov. 10, 2011); In re Friendly Ice Cream Corp., Case No. 11-13167 (KG) (Bankr. D. Del. Oct. 6, 2011); In re NewPage Corp., Case No. 11-12804 (KG) (Bankr. D. Del. Sept. 8, 2011); In re Nebraska Book Co., Inc., Case No. 11-12005 (PJW) (Bankr. D. Del. June 28, 2011); In re General Motors Corp., Case No. 09-50026 (REG) (Bankr. S.D.N.Y. June 25, 2009); In re Hawaiian Telcom Commc'ns, Inc., Case No. 08-02005 (LK) (Bankr. D. Haw. Jan. 14, 2009).

RESERVATION OF RIGHTS

31. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtor or the existence of any lien against the Debtor's properties; (b) a waiver of the Debtor's rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute a Lien Claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code section 365; or (f) otherwise affecting the Debtor's rights under Bankruptcy Code section 365 to assume or reject any executory contract with any party subject to the proposed Order once entered. Further, neither the Debtor nor its officers, directors, attorneys nor agents will have any liability on account of any decision by the Debtor not to pay a Lien Claim, and nothing contained in the Motion shall be deemed to increase, reclassify, elevate

to an administrative expense status, or otherwise affect the Lien Claims to the extent they are not paid.

32. Additionally, nothing in the Motion is intended to modify or waive any of the Debtor's rights with respect to Goods/Services requested or received from the Mechanics and Materialmen including the Debtor's rights to (a) cancel a purchase order; (b) decline the acceptance of goods and services; (c) return any defective, nonconforming or unacceptable goods; or (d) contest the amount of any invoice or claims on any grounds.

IMMEDIATE RELIEF IS NECESSARY TO AVOID IMMEDIATE AND IRREPARABLE HARM

33. 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). If the Mechanics or Materialmen withheld the Debtor's materials, various pieces of the Debtor's production process would shut down immediately. Accordingly, 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)

34. 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 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), as the exigent nature of the relief sought herein justifies immediate relief.

RESERVATION OF RIGHTS

35. 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.

NOTICE

36. 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

37. 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 orders, substantially in the forms 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

/s/ Anthony W. Clark

Anthony W. Clark (I.D. No. 2051)
One Rodney Square
P.O. Box 636
Wilmington, Delaware 19899-0636
Telephone: (302) 651-3000
Fax: (302) 651-3001

- and -

Kenneth S. Ziman (*pro hac vice admission pending*)
J. Eric Ivester (*pro hac vice admission pending*)
Four Times Square
New York, New York 10036-6522
Telephone: (212) 735-3000
Fax: (212) 735-2000

- and -

James J. Mazza, Jr. (*pro hac vice admission pending*)
155 N. Wacker Dr.
Chicago, Illinois 60606-1720
Telephone: (312) 407-0700
Fax: (312) 407-0411

Proposed Counsel for Debtor and Debtor in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X
:

In re: : Chapter 11

:

EXIDE TECHNOLOGIES, : Case No. 13-11482

:

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

:

----- X

INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363(b) AND 506(b) AUTHORIZING DEBTOR TO PAY CERTAIN PREPETITION CLAIMS OF MECHANICS AND MATERIALMEN IN SATISFACTION OF PERFECTED OR POTENTIAL MECHANICS’, MATERIALMEN’S OR SIMILAR LIENS OR INTERESTS

Upon the motion (the “Motion”)² of the Debtor for an order under 11 U.S.C. §§ 105(a), 363(b) and 506(b) authorizing the Debtor to pay certain prepetition obligations of contractors, subcontractors, mechanics or materialmen (collectively, the “Mechanics and Materialmen”) in satisfaction of perfected or potential mechanics’, materialmen’s, or similar liens against or interests in the Debtor’s property (collectively, the “Lien Claims”); and the Court having reviewed the Motion and the First Day Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and other parties in interest and should be granted on an interim basis to the extent set forth herein, pending notice as provided for herein; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record

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 All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

herein; 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 on an interim basis as set forth herein.

2. The Debtor is authorized, in its sole discretion, to make payments (the “Payments”) on the Lien Claims of the Mechanics and Materialmen on the following terms and conditions:

- (a) The Debtor, in its sole discretion, shall determine which Mechanics and Materialmen, if any, are entitled to Payments under this Order, subject to the provisions below;
- (b) The Mechanic or Materialman must be engaged in providing Goods/Services with respect to a project that involves the Debtor’s property and is incomplete as of the Petition Date;
- (c) The Debtor must conclude that (i) the Goods/Services of the Mechanic or Materialman at issue are essential to the proper and/or timely completion of the project, (ii) the Mechanic or Materialman will refuse to continue providing such Goods/Services if the Lien Claims are not paid, and (iii) the Debtor’s facilities and/or operations will be adversely affected if the project is not properly and/or timely completed;
- (d) As a condition to receiving a Payment, the Mechanic or Materialman must agree to (i) continue providing Goods/Services to the Debtor as necessary to complete the project on terms at least as favorable as the Mechanic or Materialman made available to the Debtor prior to the Petition Date and (ii) promptly to release any liens and/or interest, if any, upon payment of such Lien Claim; *provided*, however, that should the Mechanic or Materialman 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;
- (e) Prior to making a Payment to a Mechanic or Materialman under the Motion, the Debtor may, in its absolute discretion, settle all or some of the Lien Claims of the Mechanics or Materialmen for less than their face amount without further notice or hearing; and

- (f) Any payment of a Mechanic's or Materialman's Claim shall be made with a full reservation of rights regarding the extent, validity, perfection or possible avoidance of any liens and/or interests, if any.

3. Payments of the Lien Claims under this Order shall not exceed a maximum aggregate amount of \$5.2 million without further relief from this Court.

4. 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.

5. 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.

6. 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 or the existence of any lien against the Debtor's properties; (b) a waiver of the Debtor's rights to dispute any claim or lien 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 Critical Vendor Claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code section 365; or (f) otherwise affecting the Debtor's rights under

Bankruptcy Code section 365 to assume or reject any executory contract with any party subject to this Order.

7. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any party subject to this Order.

8. 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.

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

10. 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.

11. 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 (7) 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.

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

Dated: Wilmington, Delaware
_____, 2013

UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

----- X

In re:	:	Chapter 11
	:	
EXIDE TECHNOLOGIES,	:	Case No. 13-11482
	:	
Debtor. ¹	:	Related Docket Nos. _____
	:	

----- X

**FINAL ORDER PURSUANT TO 11 U.S.C. §§ 105(a), 363(b) AND 506(b)
AUTHORIZING DEBTOR TO PAY CERTAIN PREPETITION CLAIMS
OF MECHANICS AND MATERIALMEN IN SATISFACTION OF
PERFECTED OR POTENTIAL MECHANICS', MATERIALMEN'S
OR SIMILAR LIENS OR INTERESTS**

Upon the motion (the "Motion")² of the Debtor for an order under 11 U.S.C. §§ 105(a), 363(b), and 506(b) authorizing the Debtor to pay certain prepetition obligations of contractors, subcontractors, mechanics, or materialmen (collectively, the "Mechanics and Materialmen") in satisfaction of perfected or potential mechanics', materialmen's, or similar liens against or interests in the Debtor's property (collectively, the "Lien Claims"); and the Court having reviewed the Motion and the First Day Declaration; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been

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 All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

given and that no other or further notice is necessary; and upon the record herein; 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 on a final basis as set forth herein.

2. The Debtor is authorized, in its sole discretion, to make payments (the “Payments”) on the Lien Claims of the Mechanics and Materialmen on the following terms and conditions:

- (a) The Debtor, in its sole discretion, shall determine which Mechanics and Materialmen, if any, are entitled to Payments under this Order, subject to the provisions below;
- (b) The Mechanic or Materialman must be engaged in providing Goods/Services with respect to a project that involves the Debtor’s property and is incomplete as of the Petition Date;
- (c) The Debtor must conclude that (i) the Goods/Services of the Mechanic or Materialman at issue are essential to the proper and/or timely completion of the project, (ii) the Mechanic or Materialman will refuse to continue providing such Goods/Services if the Lien Claims are not paid, and (iii) the Debtor’s facilities and/or operations will be adversely affected if the project is not properly and/or timely completed;
- (d) As a condition to receiving a Payment, the Mechanic or Materialman must agree to (i) continue providing Goods/Services to the Debtor as necessary to complete the project on terms at least as favorable as the Mechanic or Materialman made available to the Debtor prior to the Petition Date and (ii) promptly to release any liens and/or interest, if any, upon payment of such Lien Claim; *provided*, however, that should the Mechanic or Materialman 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;
- (e) Prior to making a Payment to a Mechanic or Materialman under the Motion, the Debtor may, in its absolute discretion, settle all or some of the Lien Claims of the Mechanics or Materialmen for less than their face amount without further notice or hearing; and

- (f) Any payment of a Mechanic's or Materialman's Claim shall be made with a full reservation of rights regarding the extent, validity, perfection or possible avoidance of any liens and/or interests, if any.

3. Payments of the Lien Claims under this Order shall not exceed a maximum aggregate amount of \$10.4 million without further relief from this Court.

4. 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.

5. 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.

6. 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 or the existence of any lien against the Debtor's properties; (b) a waiver of the Debtor's rights to dispute any claim or lien 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 Critical Vendor Claim; (e) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code section 365; or (f) otherwise affecting the Debtor's rights under

Bankruptcy Code section 365 to assume or reject any executory contract with any party subject to this Order.

7. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any party subject to this Order.

8. Notwithstanding the relief granted herein, no action by any Debtor is permitted to the extent that it would be inconsistent with any cash collateral and/or postpetition financing order entered by this Court.

9. 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.

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

11. 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.

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

Dated: Wilmington, Delaware
_____, 2013

UNITED STATES BANKRUPTCY JUDGE