

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

EXIDE TECHNOLOGIES,¹

Debtor.

Chapter 11

Case No. 13-11482 (KJC)

Hearing Date: January 22, 2014 at 3:00 p.m. (ET)

Objections Due: January 15, 2014 at 4:00 p.m. (ET)

**APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF EXIDE TECHNOLOGIES FOR ENTRY OF AN ORDER
AUTHORIZING THE EMPLOYMENT AND RETENTION OF GEOSYNTEC
CONSULTANTS AS ENVIRONMENTAL CONSULTANTS TO THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

The Official Committee of Unsecured Creditors (the “**Committee**”) appointed in the bankruptcy case of the above-captioned debtor and debtor-in-possession (the “**Debtor**”) submits this application (the “**Application**”), pursuant to sections 328, 1102 and 1103 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 2014-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), for the entry of an order authorizing and approving the employment and retention of Geosyntec Consultants (“**Geosyntec**”) as environmental consultants to the Committee pursuant to the Scope of Services – Environmental Consulting Support Agreement (the “**Scope of Services Agreement**”) attached to the Declaration of Michael Berman (the “**Berman Declaration**”), which is attached hereto as **Exhibit A** and is incorporated herein by reference. In support of this Application, the Committee respectfully represents as follows:

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.

BACKGROUND

1. On June 10, 2013 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.
2. The Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
3. No trustee or examiner has been appointed in the Debtor's bankruptcy case.
4. On June 18, 2013, the Office of the United States Trustee appointed the Committee pursuant to section 1102 of the Bankruptcy Code.

JURISDICTION

5. The Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
6. The statutory predicates for the relief sought herein are sections 328, 1102 and 1103 of the Bankruptcy Code, Bankruptcy Rule 2014 and Local Rule 2014-1.

RELIEF REQUESTED

7. By this Application, the Committee seeks the entry of an order authorizing and approving the retention and employment of Geosyntec as its environmental consultants, in accordance with the terms and conditions set forth in the Scope of Services Agreement, pursuant to sections 328 and 1103 of the Bankruptcy Code, Bankruptcy Rule 2014 and Local Rule 2014-1.
8. Geosyntec is a specialized consulting and engineering firm that specializes in, among other things, environmental consulting. Geosyntec has a staff of over 1,000 engineers, scientists and other technical staff located in more than seventy (70) offices throughout the United States and in Australia, Canada, Ireland, Malaysia, and the United Kingdom. The

Committee understands that Geosyntec has a wealth of experience in providing environmental consulting services throughout the United States and has the necessary qualifications to perform the services required in this case.

BASIS FOR RELIEF REQUESTED

9. The Debtor, together with approximately eighty (80) direct and indirect subsidiaries, is in the business of manufacturing and selling stored electrical energy solutions and is one of the world's largest producers and recyclers of lead-acid batteries.

10. The Debtor is headquartered in Milton, Georgia, and operates thirteen (13) manufacturing facilities in the United States. It also operates approximately seventy-four (74) branches throughout North America that collect spent batteries for the Debtor's recycling facilities, including smelters which are currently active battery and recycling facilities.

11. Given the nature of its business, the Debtor operates in a heavily regulated industry and faces numerous environmental issues.

12. By way of example, the Debtor's Vernon, California, secondary recycling facility has been the subject of recent enforcement actions by both the California Department of Toxic Substances Control ("**DTSC**") and the South Coast Air Quality Management District. In response to the DTSC's enforcement action, the Debtor has agreed to, among other things, set aside approximately \$7.7 million for new air filtration and stormwater system improvements aimed to reduce arsenic emissions, for testing of nearby soil, and for blood testing of nearby residents. In addition, the Debtor's former Frisco, Texas, facility is currently undergoing extensive remediation activities under state and federal governmental oversight. Environmental regulators in Texas have indicated that the Debtor may need to expend significant funds to meet its environmental remediation obligations with respect to the remediation of the Frisco property.

13. In view of the Debtor's potential exposure to current and future material environmental obligations which may impact the administration of the Debtor's estate and the formulation of a plan of reorganization, the Committee believes that it is necessary and appropriate to employ environmental consultants in this case to provide it with independent advice regarding the environmental issues the Debtor may face. Through the services to be provided by Geosyntec, the Committee will be better positioned to evaluate the potential environmental liability of the Debtor's estate.

14. In addition, Geosyntec will assist the Committee in assessing and evaluating the Debtor's response to the investigations of the various environmental regulators, as well as assist the Committee to estimate potential future capital expenditures and remediation expenses based on applicable regulatory requirements.

15. At bottom, because the amount of environmental exposure may directly impact recoveries to general unsecured creditors, it is critical that the Committee have independent environmental consultants that could advise the Committee and interface with the Debtor's environmental professionals and employees on behalf of the Committee (and ultimately for the benefit of general unsecured creditors) with respect to environmental issues.²

SCOPE OF SERVICES

16. As further set forth in the Scope of Services Agreement, the Committee is seeking to retain Geosyntec as environmental consultants to provide services to the Committee, including, but not limited to:³

(a) Assist the Committee in evaluating potential environmental exposure at

² Importantly, both the Debtor and *ad-hoc* committee of secured noteholders have retained environmental consultants to protect their respective positions (both of which are compensated by the Debtor's estate).

³ The Application includes a summary of the terms of Geosyntec's engagement. The Scope of Services Agreement, however, shall control in all respects.

various of the Debtor's current and former plant sites;

- (b) Assist the Committee in understanding and evaluating potential future capital expenditures necessary to comply with regulatory requirements;
- (c) Assist the Committee in understanding and evaluating possible exposure to claims stemming from Exide's operations; and
- (d) Provide other services as requested by the Committee.

FEES AND TERMS OF RETENTION

17. The Berman Declaration sets forth the terms and conditions of Geosyntec's employment, its staffing and approach, and its billing practices. Geosyntec has requested that the Committee seek this Court's approval of such matters with the filing of this Application.

18. Subject to Court approval and in accordance with the reasonableness standard provided for in section 328(a) of the Bankruptcy Code, Geosyntec will seek compensation in accordance with its customary practices and in accordance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, applicable orders of this Court, and guidelines established by the U.S. Trustee. Notwithstanding anything to the contrary contained herein, the United States Trustee retains all rights to respond or object to Geosyntec's interim and final applications for compensation and reimbursement of expenses on all grounds including, but not limited to, reasonableness pursuant to section 330 of the Bankruptcy Code.

19. Geosyntec charges based on actual hours expended to perform its services at standard hourly rates established for each employee. It is the customary practice of Geosyntec to bill clients for travel time consistent with guidelines of the jurisdiction. For this jurisdiction, therefore, Geosyntec will apply a 50% discount rate to non-working travel time billed. Fees reflect economies resulting from the use of paraprofessional and support personnel to develop schedules and analyses, input computer data, perform research, work on fee applications, and

other activities necessary to the efficient administration of a case. The billing rates for professionals assigned to this engagement in effect as of January 1, 2014,⁴ are as follows:

Michael Berman	\$270
Michael McKibben	\$270
Jeffrey Leed	\$270

Other professional rates are as follows:

Professional	\$122 - \$215
Associate	\$240
Principal	\$270
Other Staff	\$52 - \$135

20. Geosyntec charges for reasonably incurred, out-of-pocket expenses associated with an assignment including, but not limited to, costs of reproduction, typing, legal counsel, any applicable state sales or excise taxes, and other direct expenses.

21. Geosyntec will provide a monthly fee statement for services rendered and out-of-pocket expenses incurred which will be accompanied by a list of professional, paraprofessional and support personnel providing services, their respective billing rates, the aggregate hours expended by each such person, a general description of the services rendered, summarized by discrete project, a detailed description of the services performed by each professional, paraprofessional and support person providing such services, the time expended, by discrete project, by day and a reasonably detailed breakdown of the disbursements incurred.

⁴ The hourly rates are subject to periodic adjustments, which occur annually on or about January 1, to reflect economic and other conditions. Geosyntec will advise the Debtor and the United States Trustee of any increases in its hourly rates.

GEOSYNTEC'S DISINTERESTEDNESS

22. The Committee submits that the retention of Geosyntec under the terms described herein is appropriate under sections 327, 328 and 1103 of the Bankruptcy Code. Section 327(a) of the Bankruptcy Code, as may be applicable by section 1103 of the Bankruptcy Code, empowers a committee, with the Court's approval, to employ professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons . . ." 11 U.S.C. § 327(a). Section 101(14) of the Bankruptcy Code defines "disinterested person" as a person that:

- (A) is not a creditor, an equity security holder, or an insider;
- (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and
- (C) Does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor.

11 U.S.C. § 101(14).

23. Pursuant to section 1103(b) of the Bankruptcy Code, a professional employed to represent a committee may not, while employed by such committee, represent any other entity having an interest materially adverse in connection with the case.

24. As more fully discussed in the Berman Declaration, Geosyntec is not owed any amounts with respect to pre-petition fees and expenses.

25. To the best of the Committee's knowledge, information and belief, as set forth in the Berman Declaration, Geosyntec is not related to or connected with and neither holds nor represents any interest adverse to the Debtor, its estate, its creditors or any other party in interest herein or their respective attorneys or the U.S. Trustee or anyone employed in the Office of the U.S. Trustee in the matters for which Geosyntec is proposed to be retained, except that Geosyntec is connected with the Committee by virtue of this engagement, and Geosyntec may

represent or have represented certain of the Debtor's creditors or other parties in interest herein, or interests adverse to such creditors or other parties in interest herein, in matters unrelated to this chapter 11 case. Consequently, Geosyntec is a "disinterested person," as that term is defined in section 101(14) of the Bankruptcy Code and as required by section 1103(b) of the Bankruptcy Code. The Berman Declaration, executed on behalf of Geosyntec in accordance with section 1103(a) of the Bankruptcy Code and Bankruptcy Rule 2014, is appended hereto and incorporated herein by reference. The Committee's knowledge, information and belief regarding the matters set forth in this paragraph is based, and made in reliance, upon the Berman Declaration. Geosyntec informed the Committee that it has undertaken a detailed search of available information to determine and to disclose whether it is performing or has performed services for any significant creditors, equity security holders or insiders in unrelated matters.

26. In connection with its proposed retention by the Committee in this case, Geosyntec conducted a review to determine whether it has performed services for the Debtor, its affiliates and other interested parties identified on a list ("**Interested Party List**") provided to Geosyntec by counsel to the Committee. Geosyntec then reviewed those results. Based upon the information presently available, except as may be set forth in the Berman Declaration, Geosyntec is aware of no conflicts in connection with this engagement. None of the services that were or will be provided in the course of these other engagements: (i) is connected in any way to this proceeding; (ii) will impact or conflict with or be adverse to the Debtor, its estate or the Committee in this proceeding; and (iii) will compromise Geosyntec's ability to provide services in this proceeding.⁵

⁵ As noted in the Berman Declaration, Geosyntec does occasionally employ independent contractors to work on its projects. As part of this retention, Jeffrey Leed will serve as an independent contractor to Geosyntec. Leed Environmental, Inc. ("**Leed Environmental**"), of which Jeffrey Leed is President, currently has a claim against the Debtor in the amount of \$1,465.90. The claim arises from brief services that Leed Environmental provided to the

27. Geosyntec has indicated that it will promptly update the Berman Declaration, disclosing any material developments regarding the Debtor or any other pertinent relationships that require disclosure in the above-captioned case, if and when any such developments or relationships come to Geosyntec's attention.

APPLICABLE AUTHORITY

28. The Committee seeks approval of the engagement and retention of Geosyntec pursuant to sections 328, 1102 and 1103(a) of the Bankruptcy Code. Section 1103(a) of the Bankruptcy Code authorizes the retention of professionals to represent or perform services for the Committee. *See* 11 U.S.C. § 1103(a). In addition, section 328(a) of the Bankruptcy Code provides that a Committee “with the court’s approval, may employ or authorize the employment of a professional person under section 327 or 1103 . . . on any reasonable terms and conditions of employment . . .” 11 U.S.C. § 328(a). Thus, section 328(a) provides for flexibility in the compensation structure provided to retained professionals. As the Fifth Circuit noted in *Donaldson Lufkin & Jenrette Securities Corp. v. National Gypsum (In re National Gypsum Co.)*:

Prior to 1978 the most able professionals were often unwilling to work for bankruptcy estates where their compensation would be subject to the uncertainties of what a judge thought the work was worth after it had been done. That uncertainty continues under the present § 330 of the Bankruptcy Code, which provides that the court award to professional consultants “reasonable compensation” based on relevant factors of time and comparable costs, etc. Under present § 328 the professional may avoid that uncertainty by obtaining court approval of compensation agreed to with the trustee (or debtor or committee).

123 F.3d 861, 862 (5th Cir. 1997) (internal citations and emphasis omitted).

29. Therefore, the Committee is seeking to retain Geosyntec under section 328(a) of

Debtor in connection with a minor Pennsylvania State inquiry. Leed Environmental has indicated that it will withdraw and waive its *de minimis* claim against the Debtor.

the Bankruptcy Code. Notwithstanding the foregoing, the U.S. Trustee retains all rights to object to Geosyntec's interim and final fee applications (including expense reimbursement) on all grounds, including but not limited to the reasonableness standard provided for in section 330 of the Bankruptcy Code.

30. Bankruptcy Rule 2014 sets forth certain elements which must be provided in a retention application in support of a professional person. The Committee submits Geosyntec has satisfied all of the necessary requirements to be approved as environmental consultants to the Committee.

31. The Committee respectfully submits that retention of Geosyntec pursuant to the terms of the Scope of Services Agreement is reasonable and in the best interest of the Committee.

NOTICE

32. Notice of this Application has been given to the following parties or, in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee for the District of Delaware; (ii) Counsel to the Debtor; (iii) counsel to the agent under the 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; and (vii) those parties requesting notice pursuant to Bankruptcy Rule 2002. The Committee submits that no other or further notice is necessary or required.

33. No previous application for relief sought herein has been made to this or any other Court.

WHEREFORE, the Committee respectfully requests that this Court enter an Order, substantially in the form submitted herewith, authorizing the Committee to retain and employ Geosyntec as environmental consultants to the Committee, and grant the Committee such other and further relief as the Court deems just or proper.

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**OFFICIAL COMMITTEE OF UNSECURED
CREDITORS OF EXIDE TECHNOLOGIES**

In its capacity as Designated Signatory of the Committee
and not in its individual capacity

/s/ Michael Stollo

Michael Stollo
Co-Chairperson of Committee
Pension Benefit Guaranty Corporation

/s/ Andrew Sole

Andrew Sole
Co-Chairperson of Committee
Esopus Creek Value Series Fund LP-Series "A"

Dated: December 31, 201