Fill in this information to identify the case:

Debtor 1 Duro Dyne National Corp.

Debtor 2 (Spouse, if filing)

United States Bankruptcy Court for the: District of New Jersey

Case number 18-27963 (MBK)

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Official Form 410

Proof of Claim

12/15

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. Who is the current creditor?

Hartford Accident and Indemnity Company
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

2. Has this claim been acquired from someone else?

☑ No
☐ Yes. From whom?

3. Where should notices and payments to the creditor be sent?

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	**Where should payments to the creditor be sent?** (if different)
Joshua Weinberg/Shipman & Goodwin LLP Name	Name
1875 K Street, N.W., 6th Floor Number Street	Number Street
Washington DC 20006 City State ZIP Code	City State ZIP Code
Contact phone 202-469-7750	Contact phone
Contact email jweinberg@goodwin.com	Contact email

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. Does this claim amend one already filed?

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim?

☑ No
☐ Yes. Who made the earlier filing?

DURO DYNE POC
00035

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?

☑ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. How much is the claim?

$ 3,441,165.91 . **Does this amount include interest or other charges?**

☐ No
☑ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim?

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

Reimbursement for pre-petition indemnity costs and defense costs.

9. Is all or part of the claim secured?

☑ No
☐ Yes. The claim is secured by a lien on property.

Nature of property:

☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim.*
☐ Motor vehicle
☐ Other. Describe: _____

Basis for perfection: _____

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

Value of property: $_____

Amount of the claim that is secured: $_____

Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)

Amount necessary to cure any default as of the date of the petition: $_____

Annual Interest Rate (when case was filed)_____%

☐ Fixed
☐ Variable

10. Is this claim based on a lease?

☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. Is this claim subject to a right of setoff?

☑ No
☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?** A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.		**Amount entitled to priority**
	☑ No	
	☐ Yes. *Check one:*	
	☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$
	☐ Up to $2,775* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$
	☐ Wages, salaries, or commissions (up to $12,475*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$
	☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$
	☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$
	☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$

* Amounts are subject to adjustment on 4/01/16 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

- ☐ I am the creditor.
- ☑ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 01/07/2019
MM / DD / YYYY

Signature

Print the name of the person who is completing and signing this claim:

Name: Joshua D. Weinberg
First name | Middle name | Last name

Title:

Company: Shipman & Goodwin LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 1875 K Street, N.W.
Number Street

Washington | DC | 20006
City | State | ZIP Code

Contact phone: 202-469-7750 Email: jweinberg@goodwin.com

ATTACHMENT A TO PROOF OF CLAIM BY HARTFORD ACCIDENT AND INDEMNITY COMPANY (CLASS 7)

In re Duro Dyne National Corp., et al., No. 18-27963 (MBK) (Bankr. D.N.J.)
In re Duro Dyne Machinery Corp., No. 18-27969 (MBK) (Bankr. D.N.J.)
In re Duro Dyne Corporation, No. 18-27968 (MBK) (Bankr. D.N.J.)
In re Duro Dyne West Corp., No. 18-27971 (MBK) (Bankr. D.N.J.)
In re Duro Dyne Midwest Corp., No. 18-27970 (MBK) (Bankr. D.N.J.)

This Attachment A is an integral part of, and is incorporated by reference into, the proof of claim filed by Hartford Accident and Indemnity Company ("Hartford") against each of the above identified Debtors in their jointly administered Chapter 11 cases.

Hartford issued commercial general primary and umbrella liability policies (the "Insurance Policies") to Duro Dyne during periods from 1986 to 1989 under which some or all of the Debtors assert rights to insurance coverage. Hartford has previously provided copies of the Insurance Policies to Debtors, which are already aware of the essential terms of the Insurance Policies. Hartford will make additional copies of the Insurance Policies available to Debtors or the Court upon request.

Debtors have been the subject of claims and lawsuits by persons alleging that Debtor is liable to them for personal injury, bodily injury, and/or death resulting from exposure to asbestos-containing products, and may in the future be the subject of additional such claims (collectively, the "Asbestos Claims"). Hartford has paid significant defense and indemnity expenses on behalf of Debtors on account of Asbestos Claims under the Hartford Policies in each case subject to full reservations of rights, including, without limitation, its rights to reallocation and/or recoupment of amounts that Hartford has paid.

On or about September 19, 2013, the North River Insurance Company commenced a lawsuit against Duro Dyne Corporation and Debtors' other primary and umbrella/excess insurers, including Hartford, in New York Supreme Court, Suffolk County (the "New York State Court Action"). Hartford and Duro Dyne each asserted cross-claims. Among other things, the parties to the New York State Court Action seek declarations concerning the scope of Hartford's obligations to defend and/or indemnify Debtors with respect to the Asbestos Claims and concerning Duro Dyne's obligation to contribute, reimburse and/or indemnify Hartford for defense and/or indemnity costs that Hartford advanced on Duro Dyne's behalf in excess of Hartford's appropriate share.

In an order dated July 10, 2014 (the "2014 Trial Court Order"), the New York Supreme Court denied motions for summary judgment by Duro Dyne and made several rulings regarding the parties' respective rights and obligations, including:

- The Court held, consistent with the parties' agreement, that "New York law applies and that . . . . New York law applies a pro rata allocation for indemnity costs among successive insurance carriers, including to the policyholder for a period where no coverage exists."

- Approving of the Second Circuit's reliance on the "availability rule" in the *Stonewall* decision, the Court also held that the proper cutoff date for allocation of costs to Duro Dyne was 1990 or 1991, when insurance for asbestos-related claims allegedly became commercially unavailable to Duro Dyne.

- The Court held that Duro Dyne is required to contribute to defense costs "to the extent that claims in the underlying actions clearly occurred during the periods it lacked insurance."

- The Court held that the insurers have not waived or been estopped from asserting their rights to payment from Duro Dyne or other insurers where payments were made to cover periods for which they are responsible.

Duro Dyne did not challenge the Court's *pro rata* allocation ruling. The Appellate Division affirmed the trial court's wavier and estoppel rulings on August 23, 2017. *See North River Ins. Co. v. Duro Dyne Nat. Corp.,* 153 A.D.3d 844, 61 N.Y.S.3d 78 (App. Div. 2017) (the "Appellate Order").

In 2018, the New York Court of Appeals decided *Keyspan Gas E. Corp. v. Munich Reins. Am., Inc.*, 31 N.Y.3d 51, 96 N.E.3d 209, 79 N.Y.S.3d 113 (2018). The *Keyspan* decision, which involved allocation of loss in the context of another long-tail claim (environmental property damage) rejects the "unavailability rule" that the Court had applied in the New York Coverage Action. Instead, *Keyspan* holds that loss occurring during an uninsured period is the responsibility of the policyholder irrespective of whether insurance was commercially available during that period. Consequently, pursuant to the *Keyspan* decision, Duro Dyne is responsible for the share of defense and indemnity payments for loss during periods where Duro Dyne's insurance was either exhausted or insolvent (*i.e.*, 1954 to 1972 and 1978 to 1983) as well as for loss occurring after 1990, when insurance was allegedly unavailable to Duro Dyne due to the addition of asbestos exclusions in liability policies, up to the time of manifestation of an asbestos-related disease.

Following the *Keyspan* decision, Hartford filed a Motion to Renew its 2014 summary judgment motion, seeking reconsideration of the Court's earlier application of the "unavailability rule," which the *Keyspan* Court rejected. That motion remains pending and has been set for argument in the New York Coverage Action on March 18, 2019.

Without limitation, the basis for Hartford's claim against Debtor with respect to Class 7 of the current proposed plan includes the following:

1. *Claim For Recovery of Amounts Paid In Excess of Proper Allocation – Indemnity Costs Incurred Pre-Petition.* Prior to the petition date, Hartford paid a portion of the costs incurred to settle or otherwise resolve Asbestos Claims asserted against Debtors in underlying tort lawsuits ("pre-petition indemnity costs"). Hartford is entitled to recover from Debtors the amounts that Hartford has paid as pre-petition indemnity costs that are in excess of Hartford's proper pro rata time on the risk share following an allocation to all triggered policy periods, including periods for which the Debtor is responsible under *Keyspan* (*i.e.*, periods where Debtor was uninsured or purchased insurance from insurers that have become insolvent).

Hartford calculates the amount of this part of its claim at approximately $3,441,165.91. Prior to the petition date, Hartford paid $4,262,185.32 in pre-petition indemnity costs. Hartford contends that, of that amount, $2,252,256.79 should have been paid by Debtors as their proper and equitable pro rata time on the risk share of that amount. In addition, Hartford is entitled, under New York law, to simple interest at 9% per annum pursuant to NY CPLR § 5004 on amounts that it has overpaid; the interest on Hartford's pre-petition indemnity cost payments totals $1,188,909.12. A schedule itemizing these interest charges is available and will be provided to the Debtors and the Court upon request.

2. *Contingent, Unliquidated Claim For Recovery of Post-Confirmation Defense and Indemnity Payments In Excess of Proper Allocation.* The currently proposed Plan (including the TDP) expressly contemplates that holders of Asbestos Claims may be permitted to litigate those claims in the tort system. The proposed plan also contemplates that the trust may tender those claims to Debtors' insurers for defense and resolution. Pursuant to the terms of the Insurance Policies and applicable New York law, including the *Keyspan* decision, Hartford is entitled to recover from Debtors (or, if applicable, the Trust as its assignee) all amounts paid by Hartford as post-confirmation defense costs and indemnity amounts that are in excess of Hartford's proper and equitable pro rata time on the risk share following an allocation among (i) all triggered policies issued by insurers who issued liability policies to Debtor and (ii) the Debtor itself, with respect to periods when Debtor was uninsured or purchased insurance from insurers that were insolvent at the time the indemnity costs were incurred. Hartford understands that any claim for recovery of these amounts is channeled to the trust and constitutes a Class 7 claim within the currently proposed plan. Hartford reserves the right to supplement its claim as it incurs post-petition defense and/or indemnity amounts that should be paid by Debtors.

3. *Claim For Breach of Contract*. Duro Dyne has breached its contractual obligations to Hartford under the Insurance Policies by refusing to reimburse Hartford under the Insurance Policies for amounts that it is contractually obligated to pay on account of amounts that Hartford has paid in excess of Hartford's pro rata time on the risk share. Some of the damages Hartford has incurred are identified in item No. 1, above and additional damages may be incurred in the future.

4. *Claim For Rejection Damages*. If any of the Insurance Policies are determined to be an executory contract and Debtor fails to assume those contracts, Hartford will be entitled to rejection damages in an amount to be determined.

5. *Setoff and Recoupment*. To the extent Hartford pays more than its allocable share of pre-petition or post-confirmation defense and indemnity costs, or is entitled to payment or reimbursement by Debtor for any reason, then Hartford is entitled to set off its Claims against Debtors against any payment obligations that it may have to Debtors (or its assignees, if appropriate).

Hartford may hold other claims that are presently contingent and/or unliquidated for any and all rights to payment, rights to receive performance, actions, defenses, setoffs, and/or recoupments arising from, related to, or in connection with any and all of Debtors' duties and obligations under the terms of the Insurance Policies. Hartford accordingly reserves the right to amend this proof of claim. Hartford also reserves the right to amend this proof of claim in

response to any plan filed by or relating to Debtors to the extent such plan creates payment rights in Hartford or purports to "channel" any of Hartford's claims against any person other than Debtor to a trust or other source of payment.

This proof of claim shall not be deemed a waiver of, and is without prejudice to, any and all of Hartford's rights, claims, and/or defenses of any nature whatsoever under or in the Insurance Policies, the Bankruptcy Code, and/or any otherwise applicable law. Further, this proof of claim is not, and shall not be deemed to be, a waiver of any rights to have issues concerning the Insurance Policies determined by a jury and/or in a court other than this Bankruptcy Court, as appropriate. Hartford specifically reserves all rights to contest Debtor's proposed classification of the claims set forth in this proof of claim.

Hartford reserves the right to amend, update, supplement, modify or increase, this proof of claim from time to time for any reason necessary to accurately reflect the amount or nature of the claims being asserted. Hartford further reserves: (i) the right to assert separate Claims for treatment under other provisions of the proposed plan, including Class 6 claims for pre-petition defense costs and, to the extent appropriate, claims for payment of administrative expense or other priority claims under Section 503 of the Bankruptcy Code; (ii) the right to assert that any or all of the Claims asserted in this proof of claim are entitled to treatment as other than a Class 7 Claim; (iii) the right to request adequate protection of its claims; (iv) the right to assert any claims or defenses in any subsequent litigation or arbitration regarding the Insurance Policies; and/or (v) the right to assert any other claims which are otherwise warranted under the circumstances.

There may be additional documents supporting this proof of claim that are not attached hereto or described herein. Hartford reserves all of its rights, in response to any objection or challenge, to rely on such additional documents to the extent relevant and necessary to support its proof of claim.