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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

In re:

Duro Dyne National Corp., *et al.*<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-27963 (MBK)

(Jointly Administered)

**Hearing Date: December 29, 2020 at 10:00 am ET**  
**Obj. Deadline: December 22, 2020 at 5:00 pm ET**

**DEBTORS' MOTION FOR ENTRY OF AN ORDER CLOSING  
CHAPTER 11 CASES EFFECTIVE AS OF DECEMBER 31, 2020  
AND DIRECTING ENTRY OF A FINAL DECREE**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through their undersigned counsel, submit this motion (the “Motion”) requesting entry of an order closing the above-captioned Chapter 11 Cases effective as of December 31, 2020 and directing entry of a final decree pursuant to sections 105(a) and 350(a) of Title 11 of the United States Code (the “Bankruptcy Code”), Rule 3022 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 3022-1 of the Local Rules for the United States Bankruptcy Court for the District of New Jersey (the “Local Rules”). In support of this Motion, the Debtors respectfully state as follows:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Duro Dyne National Corp. (4664); Duro Dyne Machinery Corp. (9699); Duro Dyne Corporation (3616); Duro Dyne West Corp. (5943); and Duro Dyne Midwest Corp. (4662).

### **JURISDICTION**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Standing *Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, as amended on September 18, 2012 (Simandle, C.J.). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief sought herein are sections 105(a) and 350(a) of the Bankruptcy Code, Rule 3022 of the Bankruptcy Rules, and Rule 3022-1 of the Local Rules.

### **RELEVANT BACKGROUND**

3. On September 7, 2018 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of New Jersey (the "Court"). The Debtors' bankruptcy cases (collectively, the "Chapter 11 Cases") are jointly administered under Case No. 18-27963 (MBK).

4. The Debtors continue to operate their business and manage their property as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the filing of this Motion, no request has been made for the appointment of a trustee or examiner in the Chapter 11 Cases.

5. On the Petition Date, the Debtors had reasonably hoped that these Chapter 11 Cases would unfold in an orderly and uncomplicated matter. The Debtors had initially anticipated that the Chapter 11 Cases would stay certain insurance coverage litigation and asbestos-related personal injury lawsuits, thereby allowing the Debtors to proceed through the confirmation process and the implementation of a 11 U.S.C. §524(g) injunction by the end of 2018.

6. On September 26, 2018, the Office of the United States Trustee for Region Three ("UST") formed the Official Committee of Asbestos Claimants (the "Committee") in accordance with § 1102(a)(1) of the Bankruptcy Code. On October 17, 2018, after a contested

hearing, the Bankruptcy Court entered the *Order Appointing a Legal Representative for Future Asbestos Personal Injury Claimants Effective as of the Petition Date* [ECF No. 191], which appointed Lawrence Fitzpatrick as the Legal Representative (the “Future Claimants’ Representative”) and overruled the objections to his appointment.

7. The initial Chapter 11 Plan was filed in these Chapter 11 Cases on September 7, 2018 [ECF No. 19]. The Debtors, the Committee and the Future Claimants’ Representative (collectively, the “Plan Proponents”) filed their Second Modified Chapter 11 Plan on November 16, 2018 [ECF No. 279]. Shortly before a scheduled Confirmation Hearing on March 6 and 7, 2019, the Plan Proponents reached settlements with several of their insurance carriers. The settlements provide for the purchase of the policies for sums to be employed to fund the Asbestos Trust. Thereafter, on June 6, 2019, the Plan Proponents filed the *Third Amended Prenegotiated Plan of Reorganization for Duro Dyne National Corp., et al., Under Chapter 11 of the Bankruptcy Code, as Modified* (ECF No. 729) (the “Plan”).

8. On July 16, 2019, this Court transmitted its *Report and Recommendation for Entry of (A) Findings and Conclusions with Respect to Third Amended Plan of Reorganization; and (B) Confirmation Order* (the “Original Report”) to the District Court. An objection to confirmation was filed on July 30, 2019 by North River Insurance Company (“North River”), and a responsive brief entitled *Brief (i) in Support of (a) Approval and Adoption of the Bankruptcy Court’s Report and Recommendation, (B) Confirmation of the Third Amended Prenegotiated Plan of Reorganization, and (C) Approval of Asbestos Insurance Settlements; and (ii) in Response to North River’s Objections* was filed by the Debtors and the other Plan Proponents on August 13, 2019.

9. On August 26, 2019, North River filed its *Reply to the Plan Proponents’ Brief (I) in Support of (A) Approval and Adoption of the Bankruptcy Court’s Report and Recommendation, (B) Confirmation of the Third Amended Prenegotiated Plan of Reorganization, and (C) Approval of Asbestos Insurance Settlements; and (II) in Response to North River’s Objections* (the “North River Reply”). The Debtors and the other Plan Proponents filed a motion

to strike the North River Reply, or, alternatively, for leave to file a surreply on September 10, 2019, which North River opposed on September 19, 2019.

10. While confirmation of the Plan was pending before the District Court, the Debtors, the Committee and the Future Claimants' Representative continued negotiations with North River to attempt to resolve its claims and objections to confirmation of the Plan.

11. On May 7, 2020, the Plan Proponents filed a motion to approve a settlement with North River, whereby, in exchange for a cash contribution by North River to the Asbestos Trust and the waiver and release of North River's claims against the Debtors, North River would become a settling asbestos insurer. Additionally, under this settlement, North River agreed to withdraw its objection to confirmation of the Plan.

12. On October 16, 2020, the Bankruptcy Court issued its *Amended Report and Recommendation for Entry of (A) Findings of Fact and Conclusions of Law with Respect to the Third Amended Plan of Reorganization; and (B) Confirmation Order* (the "Amended Report") [ECF No. 1304].

13. On October 23, 2020 (the "Confirmation Date"), the United States District Court for the District of New Jersey entered the *Order (I) Approving and Adopting the Bankruptcy Court's Amended Report and Recommendation and (II) Confirming the Third Amended Prenegotiated Plan of Reorganization for Duro Dyne National Corp., et al. Pursuant to Chapter 11 of the Bankruptcy Code, as Modified* (the "Confirmation Order") [ECF No. 1322].

14. The Plan<sup>2</sup> provides, *inter alia*, that:

- On the Plan's Effective Date, the Debtors and their respective Estates will be substantively consolidated and merged into Debtor Duro Dyne National Corp., and Duro Dyne National Corp. will be the surviving entity and Reorganized Debtor on and after the Effective Date. (Plan § 1.01(108), 5.01).
- The Plan divides the Claims against and Equity Interests in the Debtors into separate classes that will determine their treatment thereunder. (Plan §§ 3.02, 3.03).

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<sup>2</sup> Capitalized terms not defined herein shall have the meaning set forth for such terms in the Plan.

- Central to the Plan is Class 7, which contains the Channeled Asbestos Claims, including current Asbestos Claims and future Demands. Under the Plan, these Channeled Asbestos Claims will be enjoined against the Protected Parties and channeled under Bankruptcy Code § 524(g) to the Asbestos Trust (“Trust”) that will be formed under the Plan. (Plan §§ 3.03(g)(ii), 4.01, 9.05). Once channeled to the Trust, the Channeled Asbestos Claims will be resolved, liquidated, and (if eligible) paid in accordance with the Asbestos Trust Agreement and the Trust Distribution Procedures or “TDP.” (Plan §§ 3.03(g)(ii), 4.01).
- To fund its operations and pay eligible asbestos claims, the Trust will receive \$32.5 million from non-insurance assets in the following form (Plan § 4.08):
  - Cash in the amount of \$10.5 million paid on the Effective Date by or on behalf of the Debtors, their shareholders, and their nondebtor affiliates.
  - The Trust Note, in the original principal amount of \$20 million, payable in installments over roughly 20 years, at an interest rate of 7.15% per annum.
  - Rights to “Earn Out Payments,” not to exceed \$2 million, from the Reorganized Debtor’s post-Consummation earnings.
- Additionally, the Plan provides for the transfer of the Debtors’ rights to asbestos-related insurance coverage, defined in the Plan as “Asbestos Insurance Rights,” to the Trust. (Plan § 4.07). The Asbestos Insurance Rights include the proceeds from the Asbestos Insurance Settlements reached between the Debtors and their Asbestos Insurers, were approval by the Bankruptcy Court. (Plan § 1.01(14)).
- The Plan provides for the issuance of the Asbestos Permanent Channeling Injunction under 11 U.S.C. § 524(g) that will shield the designated Protected Parties (e.g., the Debtors, their Affiliates, the Hinden Family Members, the Hinden Family Entities, and the Settling Asbestos Insurers) from all Channeled Asbestos Claims on and after the Plan’s Effective Date. (Plan §§ 1.01(17), (102), 9.05). In addition, the Settling Asbestos Insurers will receive the protection of the Settling Asbestos Insurer Injunction and the Asbestos Insurer Injunction that will be issued in accordance with §§ 105(a) and 524(g) of the Bankruptcy Code. (Plan §§ 1.01(16), (115), (116), 9.06, 9.07).
- Holders of Class 1 Priority Non-Tax Claims will receive payment of their Allowed Claim in full in Cash, without interest, as soon as reasonably practicable after later of Effective Date or Allowance.
- Holders of Class 2 Secured Claims will receive payment of their Allowed Secured Class Claim (a) in full, in Cash, on later of (1) Effective Date or as soon as reasonably practicable thereafter, or (2) Allowance, or as soon as reasonably practicable thereafter, (b) as agreed and approved by Bankruptcy Court, (c) by surrender of property securing Secured Claim; or (d) by reinstatement per Bankruptcy Code § 1124(2)(B).

- The Plan leaves unaltered the legal, equitable, and contractual rights to which each such Allowed Employee Benefit Claim entitles the Holder of such Claim, including, for the avoidance of doubt, quarterly installment payments on account of any Allowed Withdrawal Liability Claims as provided pursuant to Title IV of ERISA.
- The Plan leaves unaltered the legal, equitable, and contractual rights to which each Allowed Class 4 Worker Compensation Claim entitles the Holder of such Claim.
- Holders of Class 5 General Unsecured Claims will receive (a) payment in the ordinary course of business or applicable court order or applicable law, or (b) such other treatment that renders such Holders Unimpaired.
- Holders of Class 6 Prepetition Defense-Cost Contribution Claims will receive, unless different treatment is agreed to, payment of their Allowed Claim by (a) annual payments of principal plus 6.5% interest based on 20 year amortization schedule on 1st through 7th year anniversaries of Effective Date; and (b) a balloon payment of all outstanding principal and interest on 8th anniversary of Effective Date.
- Holders of Class 8 Bonded Claims will receive payment of their Allowed Claim in cash on later of Effective Date or Allowance, or as soon thereafter as is reasonably practicable; provided, however, that (a) in no event shall such Cash distribution exceed the amount of the bond or other payment assurance securing such Allowed Bonded Claim and (b) each such holder of an Allowed Bonded Claim shall look solely to the bond or other payment assurance securing its Claim for such Cash distribution with respect to such Allowed Bonded Claim, and shall receive no property or Distribution from the applicable Debtor, the Reorganized Debtor, or the Asbestos Trust on account of such Allowed Bonded Claim?
- Class 9 Intercompany Claims were expunged and no Distributions will be made on account of any Allowed Intercompany Claim.
- Holders of Class 10 Related-Party Claims will be paid in the ordinary course according to any terms or agreements governing such Claims, except that all Related-Party Claims shall be subordinated to the Trust Note in accordance with Section 4.16 of the Plan and are subject to any other applicable terms or provisions set forth in the Plan Documents.
- The Plan also requires, among other things, payment of all Allowed Administrative Expense Claims other than Professional Claims on later of the Effective Date, Allowance or as soon thereafter as reasonably practicable pursuant to section 2.01(a) of the Plan.
- Pursuant to section 2.01(c) of the Plan, Holders of Professional Claims will (i) file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date by the first Business Day after the date that is thirty (30) calendar days after the Effective Date or by such other date as may be fixed by the Bankruptcy Court, and (ii) be paid

in full in such amounts as are Allowed by the Bankruptcy Court (A) within seven (7) calendar days after such Professional Claim becomes an Allowed Administrative Claim, or (B) upon such other terms as may be mutually agreed upon between the holder of such Allowed Professional Claim and the Reorganized Debtor. The Court's Notice of Order Confirming Plan states that all applications for allowance of fees must be filed within 90 days after entry of a final Confirmation Order. [ECF No. 1332-1]. The Reorganized Debtor will pay reasonable fees and expenses relating to any post-Effective Date activities authorized or described in Plan § 13.03(c) without the necessity of approval by the Bankruptcy Court. *See* Confirmation Order, ¶ 50.

- With respect to Priority Tax Claims, the Plan provides that, on the Effective Date or as soon thereafter as reasonably practicable, the Reorganized Debtor will, at its option on account of such Allowed Claim, to: (a) pay Cash in amount of Allowed Priority Tax Claim; (b) pay Cash in amount of Allowed Priority Tax Claim payable in installments over a period not to exceed 5 years after Petition Date; or (c) provide such as may be agreed pursuant to sections 2.02 of the Plan.
- The Plan requires payment of all outstanding U.S. Trustee Fees due at the time of Confirmation, and, on and after Effective Date, payment of applicable fees when due in the ordinary course in accordance with applicable law (see Plan, § 2.03).
- Pursuant to the Plan and Confirmation Order, the Court approved the Debtors' settlements with multiple Asbestos Insurers to resolve the coverage disputes at issue in a certain state court action, seeking judicial declarations as to insurance coverage rights and obligations in connection with asbestos-related claims against the Debtors (the "Coverage Action"). Pursuant to such settlements, the Coverage Action will be dismissed.

15. Subsequent to the Confirmation Date and in accordance with the terms of the Plan, the Plan Proponents have endeavored to finalize and execute the documents necessary to effectuate the closing of the Plan and the occurrence of the Effective Date on December 31, 2020. On that date, all payments due to be made on the Effective Date will be made and all documents to be delivered on the Effective Date will be released from escrow and delivered.

16. Thereafter, the Reorganized Debtors will not be objecting to claims of Holders of Class 5 General Unsecured Claims and such claims will be paid by the Reorganized Debtors in the ordinary course of business. Administrative Claims and Professional Claims shall be paid by the Reorganized Debtor upon Allowance of such claims.

**RELIEF REQUESTED AND BASIS THEREOF**

17. Through this Motion, the Debtor seeks entry of a final decree, substantially in the form submitted herewith, closing the Chapter 11 Cases effective as of December 31, 2020.

18. Section 350(a) of the Bankruptcy Code provides that “[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case.” Bankruptcy Rule 3022, which implements section 350(a) of the Bankruptcy Code, further provides that “[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.”

19. The term “fully administered” is not defined by either the Bankruptcy Code or the Bankruptcy Rules. Bankruptcy courts in the Third Circuit have held that “[f]ull administration occurs for purposes of § 350(a) when all property of the estate has been distributed and creditors have been paid.” *In re Guterl Special Steel Corp.*, 316 B.R. 843, 861 (Bankr. W.D. Pa. 2004). Courts have also held that a debtor's estate is fully administered when the remaining tasks to be carried out in closing the case are ministerial in nature. *Id.* at 861-62.

20. The Advisory Committee Note (1991) to Bankruptcy Rule 3022 (the “Advisory Note”) comments that “[e]ntry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed.” The Advisory Note further sets forth certain factors that the court should consider when evaluating whether a case has been fully administered. These factors are as follows:

- (1) whether the order confirming the plan has become final;
- (2) whether deposits required by the plan have been distributed;
- (3) whether the property proposed by the plan to be transferred has been transferred;
- (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan;
- (5) whether payments under the plan have commenced; and

- (6) whether all motions, contested matters and adversary proceedings have been finally resolved.

Fed. R. Bankr. P. 3022; Advisory Committee Note (1991).

21. Courts typically use the preceding six factors to determine whether a chapter 11 case has been fully administered. *See, e.g., In re Kliegl Bros. Universal Elec. Stage Lighting Co., Inc.*, 238 B.R. 531, 542 (Bankr. E.D.N.Y. 1999); *In re Mold Makers, Inc.*, 124 B.R. 766, 768 (Bankr. N.D. Ill. 1990); *In re SLI, Inc.*, 02-12608 (WS), 2005 WL 1668396, at \*2 (Bankr. D. Del. June 24, 2005). The factors listed in the Advisory Note are not considered exhaustive, nor must a party demonstrate all of the factors, before the court may find a case to be fully administered. *Walnut Assocs. v. Saidel*, 164 B.R. 487, 493 (E.D. Pa. 1994); *In re Swiss Chalet, Inc.*, 485 B.R. 47, 51 (Bankr. D.P.R. 2012); *In re Union Home & Indus., Inc.*, 375 B.R. 912, 917 (B.A.P. 10th Cir. 2007). Rather, these factors are employed by courts as a guide to assist in the determination of whether a case is fully administered. *In re Mold Makers, Inc.*, 124 B.R. at 768; *In re SLI, Inc.*, 2005 WL 1668396, at \*2. *See also In re Omega Optical, Inc.*, 476 B.R. 157, 167 (Bankr. E.D. Pa. 2012) (“A court should review each request for entry of a final decree on a case-by-case basis and analyze the factors set forth in Rule 3022, along with any other relevant factors, in determining whether an estate has been fully administered”).

22. The Advisory Committee Note further indicates that entry of a final decree “should not be delayed solely because the payments required by the plan have not been completed,” and the Court “should not keep the case open only because of the possibility that the court's jurisdiction may be invoked in the future.” Additionally, “a final decree closing the case after the estate is fully administered does not deprive the court of jurisdiction to enforce or interpret its own orders and does not prevent the court from reopening the case for cause pursuant to § 350(b) of the [Bankruptcy] Code.” Indeed, Bankruptcy Rule 3022 was amended in order to:

set forth a flexible Rule to permit the court to determine that an estate is fully administered and should be closed even though payments or other activities involving the debtor and its creditors might continue.... As is evident by the Committee note, the Advisory

Committee interprets “fully administered” very loosely and encourages courts to use substantially more discretion in deciding whether to close a [c]hapter 11 case th[a]n Code § 350 and the Rule literally read.

*In re Gould*, 437 B.R. 34, 37-38 (Bankr. D. Conn. 2010) (quoting Fed. R. Bankr. P. 3022 ed. cmt.) (emphasis added).

23. In addition to the factors set forth in the Advisory Committee Note, courts have considered whether the plan has been substantially consummated. *See, e.g., In re Gates Cmty. Chapel of Rochester, Inc.*, 212 B.R. 220, 224 (Bankr. W.D.N.Y. 1997) (considering substantial consummation as a factor in determining whether to close a case); *Walnut Assocs.*, 164 B.R. at 493 (same). Section 1101(2) of the Bankruptcy Code defines “substantial consummation” as “(a) transfer of all or substantially all of the property proposed by the plan to be transferred; (b) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (c) commencement of distribution under the plan.”

24. Moreover, courts have held that chapter 11 cases can be closed while contested matters and other proceedings remain unresolved. In *In re Valence Technology, Inc.*, No. 12-11580-CAG, 2014 WL 5320632, at \*4 (Bankr. W.D. Tex. Oct. 17, 2014), the court granted the debtor’s motion to close the chapter 11 case despite pending appeals as to orders granting fee applications. In finding that the pendency of the appeals did not prohibit the court from entering an order closing the cases, the court noted that the confirmed chapter 11 plan provided a mechanism for the payment of the disputed fees if the fee orders were upheld on appeal – after which the plan would be fully administered. *Id.*

25. An analysis of the above factors demonstrates that the Chapter 11 Cases should be closed because the underlying Debtors’ estates have been fully administered or will be fully administered as of the December 31, 2020 Effective Date. First, the Confirmation Order was entered on October 23, 2020 and has become final, and the Effective Date will occur on December

31, 2020. Second, the payment of cash and other contributions required under the Plan will be made on or will commence on December 31, 2020 and the cash required to be distributed by the Debtors on the Effective Date pursuant to the Plan will be placed in escrow by the Debtors prior to any hearing on this Motion. Third, the assets of the Debtors will be transferred to the Reorganized Debtor or the Asbestos Trust, as applicable, as of the Effective Date. Fourth, on the Effective Date the business of the Debtors will be assumed by the Reorganized Debtor as contemplated by the Plan. Fifth, the funds to be paid by the Debtors under the Plan on the Effective Date will have been escrowed on or prior to December 31, 2020 and such funds will be paid on that date.

26. Finally, pursuant to the terms of the Confirmation Order, the Plan and the insurance settlements approved in accordance therewith, the Coverage Action will be dismissed. Furthermore, the Debtors do not intend to object to any Class 5 General Unsecured Claims and such claims will be paid in full by the Reorganized Debtor in the ordinary course of business. Other than Administrative Claims and final fee applications of professionals retained by the Debtors, the Committee and the Future Claimants' Representative to be filed, there are no pending motions, contested matters or adversary proceedings to be resolved in connection with these Chapter 11 Cases. The Debtors respectfully submit that the closing of these Chapter 11 Cases should not be delayed solely because such payments on Administrative Claims and Professional Claims have not yet occurred based on "the possibility that the court's jurisdiction may be invoked in the future." *See* Fed. R. Bankr. P. 3022; Advisory Committee Note. This is particularly true where the payment of such Claims will not impact distributions to any of the creditors in these Chapter 11 Cases. Accordingly, the Debtors request that the Court retain jurisdiction with respect to the approval of interim and final applications for the payment of Professional Claims or objections thereto filed after December 31, 2020 and with respect to any objections to Administrative Claims to the extent that any requests for the payment of Administrative Claims are filed after December 31, 2020.

27. Furthermore, closing this case is also an appropriate use of the Court's equitable power under section 105 of the Bankruptcy Code. The Court, the United States Trustee, and the Debtor will no longer have to monitor and administer these Chapter 11 Cases and these estates will no longer have to pay quarterly fees under 28 U.S.C. § 1930.

28. In sum, the facts set forth above demonstrate that the Debtors' estates have been fully administered and that the Chapter 11 Cases should be closed as of December 31, 2020.

### **NOTICE**

29. The Debtor has served this Motion on the U.S. Trustee and all parties requesting notice pursuant to Rule 2002 of the Bankruptcy Rules. In light of the nature of the relief requested herein, the Debtor respectfully submits that no other or further notice is required.

### **NO PRIOR REQUEST**

30. No prior request for the relief sought herein has been made by the Debtor to this or any other Court.

### **CONCLUSION**

**WHEREFORE**, the Debtor respectfully requests that this Court enter an order, in substantially the form submitted herewith, closing the Chapter 11 Cases as of December 31, 2020 and directing entry of a final decree, and granting such other and further relief as the Court deems necessary and proper under the circumstances.

Dated: December 8, 2020

Respectfully submitted,

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