LOWENSTEIN SANDLER LLP
Kenneth A. Rosen, Esq.
Jeffrey D. Prol, Esq.
One Lowenstein Drive
Roseland, NJ 07068
Telephone: (973) 597-2500
Facsimile: (973) 597-2400
krosen@lowenstein.com
jprol@lowenstein.com

Counsel to the Debtors and Debtors in Possession

CAPLIN & DRYSDALE, CHARTERED
James P. Wehner, Esq.
(admitted *pro hac vice*)
Jeffrey A. Liesemer, Esq.
(admitted *pro hac vice*)
One Thomas Circle, N.W.
Washington, DC 20005
Telephone: (202) 862-5000
Facsimile: (202) 429-3301
jwehner@capdale.com
jliesemer@capdale.com

Counsel to the Asbestos Claimants Committee

YOUNG CONAWAY STARGATT & TAYLOR, LLP
Edwin J. Harron, Esq.
Sara Beth A. R. Kohut, Esq.
(admitted *pro hac vice*)
Rodney Square
1000 North King Street
Wilmington, DE 19801
Telephone: (302) 571-6703
Facsimile: (302) 576-3298
eharron@ycst.com
skohut@ycst.com

Counsel to the Legal Representative

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re:	Chapter 11
DURO DYNE NATIONAL CORP., *et al.*,	Case No. 18-27963-MBK
Debtors.[1]	Jointly Administered

MOTION OF THE PLAN PROPONENTS PURSUANT TO 11 U.S.C. §§ 107(b) AND 105(a), FEDERAL RULE OF BANKRUPTCY PROCEDURE 9018, AND LOCAL CIVIL RULE 5.3 FOR AUTHORITY TO (I) FILE DOCUMENTS UNDER SEAL AND (II) REDACT COMMERCIALLY SENSITIVE, NONPUBLIC INFORMATION

TO THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY JUDGE:

Duro Dyne National Corp., Duro Dyne Corporation, Duro Dyne West Corp., Duro Dyne Midwest Corp., and Duro Dyne Machinery Corp., the above-captioned debtors and debtors-in-possession (the "Debtors"), the Official Committee of Asbestos Claimants (the "Committee"), and Lawrence Fitzpatrick in his official capacity as Legal Representative (the "FCR") (the

[1] 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 Corporation (3616); Duro Dyne West Corp. (5943); Duro Dyne Midwest Corp. (4662); and Duro Dyne Machinery Corp. (9699).

Debtors, Committee, and FCR collectively, "Plan Proponents"), respectfully represent as follows:

RELIEF REQUESTED

1. Pursuant to sections 107(b) and 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 5.3 of the Local Civil Rules of the U.S. District Court for the District of New Jersey ("Local Rules"), the Plan Proponents request authority to (a) file under seal Exhibit A to their *Motion Pursuant to Sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rule 2002, 6004 and 9019(a) for an Order Authorizing and Approving the Debtors' Entry Into a Settlement Agreement With MidStates Reinsurance Corporation and Authorizing the Sale of Policies Free and Clear of Liens, Claims, Interests and Other Encumbrances* (the "9019 Motion"), and (b) redact commercially sensitive information from the publicly-available version of Exhibit A to the 9019 Motion.[2]

2. The Plan Proponents further request that the redacted information remain under seal except as specifically provided in the Proposed Order (as defined herein) without the consent of the Plan Proponents or further order of the Court.

3. The Plan Proponents' proposed findings of fact, conclusions of law, and proposed form of order granting the relief requested herein is annexed hereto as Exhibit A (the "Proposed Order").

[2] The 9019 Motion seeks entry of an Order pursuant to §§ 363 and 105(a) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 9019 (i) authorizing the Settlement Agreement (the "Agreement") between and among the Debtors and MidStates Reinsurance Corporation, f/k/a Mead Reinsurance Corporation ("MidStates");[2] (ii) authorizing the sale of the Policies to MidStates pursuant to the terms and conditions of the Agreement, free and clear of all Interests; (iii) approving the Agreement in all respects; and (iv) enjoining various Claims against the MidStates Entities under sections 105(a) and 363(f) of the Bankruptcy Code. The Agreement is to be appended to the 9019 Motion as Exhibit A. Capitalized terms used but not defined in this Motion shall have the same meanings given to them in the Agreement.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this Motion and relief requested herein, including responses and objections thereto, if any, pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (N), and (O), as to which this Court has the statutory and constitutional power to enter a final order. Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

5. On September 7, 2018 (the "Petition Date"), the Debtors commenced their respective bankruptcy cases (the "Bankruptcy Cases") by filing voluntary petitions for relief under Chapter 11, title 11, of the United States Code.

6. On November 16, 2018, the Debtors filed the Second Amended Prenegotiated Plan of Reorganization for Duro Dyne National Corp., *et al.*, Under Chapter 11 of the Bankruptcy Code, ECF No. 279 (as may be amended, the "Filed Plan"), which provides that Asbestos Claims and Demands will be permanently channeled to a trust established under section 524(g) of the Bankruptcy Code (the "Trust").

7. The Debtors continue to operate their business and manage their property pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case.

8. On March 5, 2019, the Debtors and MidStates entered into the Agreement to resolve disputes between them in the Coverage Action regarding the extent of MidStates's duty to defend and indemnify the Debtors against asbestos-related bodily injury claims. This Agreement is the subject of the 9019 Motion.

BASIS FOR RELIEF REQUESTED

9. Section 107(b) of the Bankruptcy Code authorizes courts to issue orders to protect entities from potential harm caused by the disclosure of confidential information. In particular, section 107(b) provides that:

> On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may—(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . . .

11 U.S.C. § 107(b)(1).

10. Pursuant to Bankruptcy Rule 9018:

> On motion or on its own initiative, with or without notice, the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information . . . .

Fed. R. Bankr. P. 9018.

11. Further, section 105(a) of the Bankruptcy Code grants courts the power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. 11 U.S.C. § 105(a).

12. Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 are designed to protect business entities from disclosure of information that reasonably could be expected to cause commercial injury to the entity. *See, e.g.*, *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (citations and quotations omitted). Such information need not rise to the level of a "trade secret" to be protected. *See id.* Bankruptcy courts in particular "must deny access to judicial documents [ ] where an open inspection may be used as a vehicle for improper purposes." *See In re Motions Seeking Access to 2019 Statements*, 585 B.R. 733, 753 (D. Del. 2018) (citing *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994)).

13. "The sealing of confidential documents and information is an accepted practice in the District of New Jersey." *Immunomedics, Inc. v. Roger Williams Med. Ctr.*, No. 15-cv-04526 JLL-JAD, 2017 U.S. Dist. LEXIS 221058 (D.N.J. Jan. 18, 2017). Local Rule 5.3 governs requests "by a party or parties to seal, or otherwise restrict public access to, any materials filed with the Court[.]" L. Civ. R. 5.3. Courts have found that good cause for sealing exists under Local Rule 5.3 when a party makes a particularized showing that disclosure will cause a clearly defined and serious injury to the party seeking closure. *See Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994) (explaining that "orders [of confidentiality] . . . are intended to offer litigants a measure of privacy, while balancing against this privacy interest the public's right to obtain information concerning judicial proceedings"); *see also* Local Rule 5.3(c) (requiring a showing of (a) the nature of the materials or proceedings at issue; (b) the legitimate private or public interests warranting the relief sought; (c) the clearly defined and serious injury that would result if the relief sought is not granted; and (d) why a less restrictive alternative to the relief sought is not available).

14. Courts in this district have permitted the sealing of settlement agreements by disclosing the "general elements" of those agreements, "while at the same time protecting the confidentiality of the particulars" of the agreement. *See, e.g.*, *Starbucks Corp. v. Wellshire Farms, Inc.*, No. 14-0041 (NLH/AMD), 2015 WL 1105691, at *3 (D.N.J. Mar. 11, 2015) (citing *Pansy*, 23 F.3d at 786).

15. Here, the Plan Proponents seek to seal only the Settlement Amount contained in the Agreement between the Debtors and MidStates. If the Settlement Amount is not protected, the Debtors' ability to settle with other insurers for appropriate sums may be seriously impaired, given that those negotiations involve similar, if not identical, issues to those that were settled

with MidStates. While the Debtors believe the Settlement Amount represents a reasonable compromise based on the parties' evaluation of their respective positions and their interest in avoiding the delay, uncertainty, and expense inherent in continuing litigation, other insurers may seek to use the Settlement Amount as leverage in their own negotiations with the Debtors. Accordingly, the Settlement Amount constitutes confidential commercial information that falls within the parameters of Local Rule 5.3 and section 107(b) of the Bankruptcy Code.

16. The Debtors' interest in protecting their confidential information and the Plan Proponents' interest maximizing the assets available to the Trust through settlements with other insurers outweighs any public interest in the disclosure of the information.

17. Consistent with the standard set forth in *Starbucks Corp.*, the Plan Proponents' proposed approach is the least restrictive means of protecting themselves from commercial injury, as it contemplates redacting only the Settlement Amount in order to limit the sealed information to the "particulars" of the Agreement requiring strict confidentiality. *See* 2015 WL 1105691, at *3.

18. The Plan Proponents have filed the 9019 Motion with an unredacted Agreement with the Court for *in camera* review.

19. No previous request for the relief sought herein has been made by the Plan Proponents to this or any other court.

WHEREFORE, the Plan Proponents respectfully request that the Court grant the relief requested herein and such other and further relief as it deems just and proper.

Respectfully submitted,

LOWENSTEIN SANDLER LLP

/s/ Jeffrey D. Prol
Kenneth A. Rosen, Esq.
Jeffrey D. Prol, Esq.
One Lowenstein Drive
Roseland, NJ 07068
Telephone: (973) 597-2500
Facsimile: (973) 597-2400
krosen@lowenstein.com
jprol@lowenstein.com

Counsel to the Debtors and Debtors in Possession

THE LAW OFFICE OF JOHN A. FIALCOWITZ, LLC

/s/ John A. Fialcowitz
John A. Fialcowitz
89 Headquarters Plaza
North Suite 1216
Morristown, NJ 07960
Telephone: (973) 532-7208
Facsimile: (973) 993-1857

—and—

CAPLIN & DRYSDALE, CHARTERED
James P. Wehner, Esq.
(admitted *pro hac vice*)
Jeffrey A. Liesemer, Esq.
(admitted *pro hac vice*)
One Thomas Circle, N.W.
Washington, DC 20005
Telephone: (202) 862-5000
Facsimile: (202) 429-3301
jwehner@capdale.com
jliesemer@capdale.com

Counsel to the Asbestos Claimants Committee

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Edwin J. Harron
Edwin J. Harron, Esq.
Sara Beth A. R. Kohut, Esq.
(admitted *pro hac vice*)
Rodney Square
1000 North King Street
Wilmington, DE 19801
Telephone: (302) 571-6703
Facsimile: (302) 576-3298
eharron@ycst.com
skohut@ycst.com

Counsel to the Legal Representative

Dated: March 5, 2019