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

In re:

Duro Dyne National Corp., *et al.*¹

Debtors.

Chapter 11

Case No. 18-27963 (MBK)

(Jointly Administered)

Hearing Date: September 19, 2019 @ 10:00 a.m.
Obj. Deadline: September 12, 2019 @ 5:00 p.m.

**APPLICATION IN SUPPORT OF DEBTORS' FOURTH MOTION FOR ENTRY OF AN
ORDER EXTENDING THE TIME TO ASSUME OR REJECT UNEXPIRED LEASES
OF NONRESIDENTIAL REAL PROPERTY**

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), hereby submit this motion (the "Motion") for entry of a fourth order, substantially in the form submitted herewith, extending the time within which the Debtors may assume or reject unexpired leases of nonresidential real property by an additional 120 days, from September 6, 2019, through and including January 6, 2020, without prejudice to the Debtors' right to seek further extensions, if necessary. In support of the Motion, the Debtors respectfully represent as follows:

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

JURISDICTION, VENUE AND STATUTORY PREDICATES

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are section 365(d)(4) of the Bankruptcy Code and Bankruptcy Rule 12006.

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, commencing the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”) in the United States Bankruptcy Court for the District of New Jersey.

4. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the bankruptcy code.

5. On September 26, 2018, the Office of the United States Trustee appointed an Official Committee of Asbestos Claimants (the “Committee”).

6. A detailed description of the Debtors’ business and the facts surrounding the commencement of the chapter 11 cases is set forth in the *Declaration of Randall S. Hinden in Support of Chapter 11 Petitions and First Day Pleadings* (the “First Day Declaration”) [Docket No. 3], which is incorporated herein by reference.

7. The Debtors lease certain nonresidential real property from non-debtor affiliates (the “Leases”). Rent payments and other obligations due under the Leases are paid in the

ordinary course of business. The Debtors' liabilities to non-debtor related parties (the "Landlords") include:

Lessor	Property	Agreement Date	Monthly Payment	Maturity Date
ISWR Ohio	Real Property	1/08/2011	\$16,258.73	7/31/2021
Spence	Real Property	6/01/2015	\$82,546.42	5/31/2020

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* 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. The matter currently awaits decision by the District Court.

9. The Court previously entered an Order Extending the Time to Assume or Reject Unexpired Leases of Nonresidential Real Property on February 4, 2019 for the period through and including April 8, 2019 [Dkt. 434], on April 3, 2019 for the period through and including June 8, 2019. [Dkt. No. 599], and on June 7, 2019 for the period through and including September 6, 2019 [Dkt. No. 730].

10. The Debtors seek a fourth extension of the assumption/rejection period to ensure that the Leases are not rejected prior to the Debtors having an opportunity to continue to prosecute the confirmation of the Plan.

11. For this reason, the Debtors respectfully request that the 365(d)(4) deadline be extended by an additional 120 days, through and including January 6, 2020.

RELIEF REQUESTED

12. By this Motion, the Debtors seek entry of a fourth order, substantially in the form of the proposed order, granting a 120-day extension of the current deadline within which the Debtors must move to assume or reject the Leases through and including January 6, 2020. Such an extension would be subject to and without prejudice to the Debtor's rights to seek additional extensions of the time to assume or reject the Leases in accordance with the Bankruptcy Code.

BASIS FOR RELIEF

13. The Debtors seek the entry of an order pursuant to section 365(d)(4)(B)(ii) of the Bankruptcy Code extending the assumption/rejection period with respect to the Leases for an additional 120 days through and including January 6, 2020.

14. Section 365(d)(4) of the Bankruptcy Code provides in relevant part:

(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the, unexpired lease by the earlier of – (i) the date that is 120, days after the date of the order for relief; or (ii) the date of the entry of an order confirming a plan.

(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 120 days on the motion of the trustee or lessor for cause.

(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

11 U.S.C. § 365(d)(4)(A)-(B).

15. Courts have recognized the benefits of granting a debtor additional time to assume or reject unexpired nonresidential leases pursuant to section 365(d)(4) of the Bankruptcy Code. *See, e.g., In re Channel Home Ctrs., Inc.*, 989 F.2d 682, 687-88 (3d Cir. 1993); *In re GST Telecom, Inc.*, 2001 WL 686971 (D. Del. June 8, 2001). As noted by the Fourth Circuit, “nothing prevents a bankruptcy court from granting an extension because a particular debtor needs additional time to determine whether the assumption or rejection of particular leases is called for by the plan of reorganization that it is attempting to develop.” *Channel Home Ctrs., Inc.*, 989 F.2d at 689.

16. The term “cause” in section 365(d)(4) is not defined in the Bankruptcy Code. In determining whether cause exists for an extension of the assumption/rejection period, courts have considered several factors, including the following:

- (a) *where the leases are an important asset of the estate such that the decision to assume or reject would be central to any plan of reorganization;*
- (b) *where the case is complex and involves large numbers of leases; or*
- (c) *where the debtor has had insufficient time to intelligently appraise each lease’s value to a plan of reorganization.*

In re Wedtech Corp., 72 B.R. 464, 471-72 (Bankr. S.D.N.Y. 1987); *see also South St. Seaport L.P. v. Burger Boys Inc. (In re Burger Boys Inc.)*, 94 F.3d 755, 761 (2d Cir. 1996) (considering the complexity of the debtors’ case, the number of leases the debtor must evaluate and the need for judicial determination of whether a lease exists); *Channel Home Ctrs., Inc.*, 989 F.2d at 689 (“[I]t is permissible for a bankruptcy court to consider a particular debtor’s need for more time in order to analyze leases in light of the plan it is formulating.”) (internal citations omitted).

17. The Debtors submit that ample “cause” exists for the Court to extend the assumption/rejection period in connection with the Leases. The Debtors are in the midst of the

Confirmation process. The Debtors believe it is prudent to seek a fourth extension of the assumption/rejection period and avoid automatic rejection pending the continued hearing on Confirmation of the Plan or the issuance of a decision on Confirmation.

18. Furthermore, the Landlords consent to the requested extension. No pre-petition obligations exist under the Leases and the Debtors are and will remain current on their postpetition obligations under the Leases.

19. Absent the relief requested herein, the Debtors would be deemed to reject the Leases. This would potentially disrupt the operations of the Debtors' business.

20. Accordingly, based on the foregoing, the Debtors submit that a fourth extension of the assumption/rejection period with respect to the Leases for an additional 120 days through and including January 6, 2020 is necessary and appropriate, is in the best interests of the Debtors' estates and creditors, and should be granted.

NOTICE AND PRIOR REQUEST

21. Notice of this Motion has been given to (i) the United States Trustee for the District of New Jersey, (ii) counsel for 4 Site, LLC; (iii) counsel to the Asbestos Claimants Committee; (iv) counsel to the Legal Representative; (v) each person who filed a notice of appearance with the Court pursuant to Bankruptcy Rule 2002; (vi) the Debtors' twenty largest creditors; and (vii) the landlords. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is required.

22. Three prior orders granting similar relief have been entered by the Court.

WAIVER OF MEMORANDUM OF LAW

23. Because the legal points and authorities upon which this Motion relies are incorporated herein and do not raise any novel issues of law, the Debtors respectfully request that

the requirement of the service and filing of a separate memorandum of law pursuant to Local Rule 12013-2 be deemed waived.

WHEREFORE, the Debtors respectfully request that this Court (i) enter an order, substantially in the form submitted herewith, granting the relief requested herein; and (ii) grant the Debtors such other and further relief as the Court deems just and proper.

Dated: August 27, 2019

Respectfully submitted,

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/s/ Jeffrey D. Prol

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