

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:	Chapter 11
	:	
Oldco M Corporation	:	Case No. 09-13412 (MG)
(f/k/a Metaldyne Corporation), <i>et al.</i> ,	:	
	:	(Jointly Administered)
Debtors.	:	
	:	
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**DECLARATION OF JAN VAN DIJK IN
SUPPORT OF SECOND AMENDED JOINT PLAN OF LIQUIDATION
OF DEBTORS AND DEBTORS IN POSSESSION**

I, Jan Van Dijk, make this Declaration under 28 U.S.C. § 1746 and state the following under penalty of perjury:

1. I currently am Corporate Controller for MD Investors Corporation ("MD Investors"), the purchaser of substantially all of the assets of the debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"). I was hired by a predecessor of the Debtors in May 2000 and was employed by the Debtors from then until the October 16, 2009 closing of the Debtors' transaction with MD Investors (the "Closing"). Prior to the Closing, I served as Assistant Corporate Controller and Corporate Controller for Metaldyne Corporation (n/k/a Oldco M Corporation). In those capacities, I reported directly to the Chief Financial Officer of Metaldyne Corporation. As Corporate Controller, my responsibilities included: daily management of financial reporting and consolidation departments; responsibility for external reporting; management reporting; coordination of external and internal financial audits; and federal, state and local tax reporting and tax planning.

2. I submit this Declaration in Support of the Debtors' Second Amended Joint Plan of Liquidation of Debtors and Debtors in Possession (as it may be amended or

modified, the "Plan"), dated as of January 11, 2010. Capitalized terms not otherwise defined herein have the meanings given to them in the Second Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the Second Amended Joint Plan of Liquidation of Debtors and Debtors in Possession (Docket No. 1183) (the "Disclosure Statement") and the Plan.

3. Except as otherwise indicated, all statements in this Declaration are based on my personal knowledge, my review of relevant documents or my opinion based upon my experience and knowledge of the Debtors' operations and financial conditions. If I were called upon to testify, I could and would testify to each of the facts set forth herein based on such personal knowledge, review of documents or opinion.

4. It is my understanding that, under the Plan, the Debtors are proposing the substantive consolidation of the Debtors' chapter 11 estates for purposes of implementation of the Plan. In connection with the formulation of the Plan, while I was an employee of the Debtors, I participated in meetings at which the Debtors considered whether substantive consolidation was appropriate in these chapter 11 cases. In addition, since I have become an employee of MD Investors, I have participated in meetings to discuss the preliminary issues that were asserted by certain parties to the substantive consolidation of the Debtors' estates proposed by the Plan. Based upon these meetings, my review of documents and analysis of relevant factors in connection therewith, I believe that substantive consolidation would be appropriate because it would not frustrate the expectations of most trade creditors and would avoid the need to attempt to disentangle the affairs of the Debtors to the extent necessary to propose separate plans of liquidation for each of the individual Debtors. Such disentanglement would be very time-consuming and costly, if achievable at all.

History of the Debtors' Corporate Structure

5. *History of the Debtors Corporate Structure.* The entity now known as Oldco M Corporation was founded as a Delaware corporation in 1984 under the name Masco Industries, Inc., a wholly-owned subsidiary of Masco Corporation. Masco Industries, Inc. was later spun off and was publicly traded on the New York Stock Exchange under the name MascoTech, Inc. ("MascoTech") until November 2000. MascoTech went through numerous acquisitions, divestitures and business ventures. In November 2000, MascoTech was acquired in a leveraged buyout transaction by an investor group led by Heartland Industrial Partners, L.P. ("Heartland") and Credit Suisse First Boston and, shortly thereafter, MascoTech changed its name to Metaldyne Corporation. Heartland was the majority-owner of the Old Metaldyne Companies until the January 2007 Asahi Tec Transaction. The Old Metaldyne Companies, as they existed on the Petition Date, were created by Old Metaldyne's acquisition of two other established auto parts suppliers: Simpson Industries Inc., which was acquired in December 2000, and Global Metal Technologies, Inc., which was first acquired by Heartland and then later sold to Old Metaldyne in January 2001. The Old Metaldyne Companies also acquired certain of their operating assets from Dana Corporation (and its affiliates) in 2003 and Chrysler in 2004, and divested certain other operating assets including the sale of its fittings business in 2003 and its forgings business in 2006. During the period of 2001 through 2007, the Old Metaldyne Companies made a number of significant new capital investments in plant expansions and equipment for use in manufacturing parts in the automotive industry.

6. The numerous acquisitions by the Debtors and their predecessors resulted in the entanglement of many of the Debtors' corporate affairs. In many cases, after an acquisition, legal entities were not realigned based upon function but were maintained in the

manner they existed at the time of acquisition. Moreover, in some instances, separate accounting or other systems that had been maintained under different systems prior to acquisitions were separately maintained after the acquisitions. Over time, the legal structures and accounting structures of the Debtors began to be misaligned with how the Debtors actually functioned and operated their businesses. These factors increased the complexity of the Debtors' tax, accounting and other functions and contributed to the problems that would be faced if the Debtors' assets and liabilities were to be disentangled.

7. In addition, as detailed below, as of the Petition Date, the Debtors largely functioned as a single entity without regard to individual legal entities. As a result, dividing the Debtors' corporate affairs on a Debtor-by-Debtor basis would be exceedingly difficult, if not impossible.

The Entanglement of the Debtors' Corporate Affairs

8. *Operation of Businesses as Consolidated Entity.* Prior to the commencement of the bankruptcy cases, the Debtors generally functioned as a single entity — "Metaldyne" — without regard to separate legal entities. In particular, the Debtors did not maintain separate management teams or develop separate operational strategies for individual subsidiaries. Instead, the Debtors operated their businesses by "groups" or "divisions" that changed over time and were not aligned with specific legal entities. The Debtors accounted for their operations largely by "cost centers" or "profit centers," which also are not necessarily associated with any particular legal entity (and may perform services for multiple legal entities).¹ For example, the Debtors' Engine Group Powertrain/NVH Cost Center, which encompassed a significant portion of the Debtors' administrative costs, is affiliated with several legal entities.

¹ A list of certain of the "profit centers" and "cost centers" is attached hereto as Exhibit A. A list of the Debtors' legal entities is attached hereto as Exhibit B.

9. Moreover, many of the Debtors' corporate functions, including accounting, tax, purchasing, management, legal and information technology, were consolidated at the Debtors' corporate headquarters and were not conducted separately on a legal entity basis, nor were "allocations" for these costs and expenses made on a legal entity basis in the Debtors' internal books. Certain of the Debtors' business forms, such as letterhead, simply identified the entity doing business as "Metaldyne." The signage outside of most of the Debtors' facilities identified the facility as a "Metaldyne" facility and did not identify the particular legal entity that owned or operated the facility. There was historically a substantial overlap among the officers and directors of the subsidiaries of Oldco M Corporation, with most of the officers and directors of the 30 Debtor subsidiaries appointed or chosen by management of Oldco M Corporation.

10. *Historical Accounting Practices.* Historically, the Debtors have not maintained accounting books and records for their individual legal entities, and the Debtors' internal computer systems were not designed for this kind of financial reporting. Instead, the Debtors' financial statements distinguished between the financial results of those entities that were guarantors of long-term debt and the results for those entities that were not guarantors of long-term debt,² but did not provide unconsolidated results or financial information in any other manner.³

11. Additionally, while the underlying data at a more granular level was maintained by the Debtors, the Debtors' accounting systems were not designed to produce financial information on a legal entity basis. Instead, costs were assigned to "cost centers" or "profit centers" which, as detailed above, in some cases, are not associated with any particular

² The Debtors' financial statements also identified the long-term debt attributable to the "Parent" entity, under which the Debtors reported obligations under their 2012 Senior Subordinated Notes and 2013 Senior Notes.

³ As an example, the Debtors' most recent financial statement, dated March 30, 2008 is attached hereto as Exhibit C.

legal entity (but may perform services for multiple legal entities). To reconstruct this information on a legal entity basis, the information underlying the Debtors' historical financial statements would need to be examined, reformulated and allocated/disaggregated, and the assets and liabilities associated with such "cost centers" or "profit centers" would need to be assigned to individual Debtor entities.

12. *Uncertainty in Assignment of Assets and Liabilities.* Moreover, there are a number of instances where it is or would be uncertain to what Debtor entity a particular asset or liability should be assigned. Because of the movement of assets between plants and the re-sourcing of production internally from one Debtor plant to another, the assets and liabilities associated with a particular plant cannot be definitively assigned to the Debtor entity that operated that plant without a review of underlying documentation. Assigning assets and liabilities is even more difficult in other situations, including: (a) when assets and liabilities are assigned to "cost centers" or "profit centers," where such "cost centers" or "profit centers" are not plainly affiliated or operated by a particular Debtor entity; (b) when the underlying documentation does not identify a legal entity at all as the owner of the asset or obligor for a liability and where, instead, only the name "Metaldyne" is identified;⁴ and (c) when the underlying documentation cannot be located.

13. *Particular Oldco M Corporation / Oldco M Company LLC*
Interconnectedness. The financial activities of Metaldyne Corporation (n/k/a Oldco M Corporation), which was originally intended to be a holding corporation, and Metaldyne Company LLC (n/k/a Oldco M Company LLC), which was originally intended to be an operating company, have been particularly intertwined historically. Corporate financial activity

⁴ For example, many of the purchase orders between the Debtors and their customers list "Metaldyne" as the seller. An example of such a purchase order is attached hereto as Exhibit D.

— whether conducted by Metaldyne Corporation or Metaldyne Company LLC — was assigned to one or two "cost centers" which were consolidated for financial reporting purposes (i.e., such as the "Corporate HQ" cost center). When a corporate-level transaction was conducted, the party to the transaction could have been either legal entity, and no simplifying assumption can be easily utilized to determine which entity entered into a particular transaction. In fact, the entity that was party to a particular transaction, to the extent such information could be determined, could only be determined by a review of underlying documentation for the transaction, although the documentation does not always identify the correct legal entity. Moreover, Metaldyne Corporation and Metaldyne Company LLC shared a single tax identification number for some time. In certain instances, intercompany transactions with the Debtors' foreign subsidiaries were documented with one entity when the other had been intended to be the participant in the transaction. As such, it would be particularly difficult to disentangle the assets and liabilities assigned to the "corporate" cost center between Oldco M Corporation and Oldco M Company LLC.

14. *Consolidated Cash Management System.* The Debtors have historically used a single consolidated cash management system for all of the Debtors. While bank accounts were occasionally established for individual legal entities, most of the Debtors' bank accounts were part of this integrated cash management system, in which the cash of all of the Debtors was intermingled.

15. *Consolidated Tax Returns.* I have reviewed the Debtors' federal and state tax returns for the past several years. Over this time period, the Debtors have filed their federal income tax returns on a consolidated basis.⁵ Additionally, the Debtors have historically filed

⁵ Attached hereto as Exhibit E is the relevant portion of the Debtors' 2008 federal tax return, which shows that the Debtors' taxes were filed on a consolidated basis.

state tax returns on a consolidated basis where such consolidated filings are legally permissible.⁶ As such, the liabilities for taxes and rights to tax returns could not be determined by a review of the Debtors' filed returns without additional analysis.

16. *Intercompany Claims Reconstruction.* The Debtors' books and records reflect thousands of entries reflecting hundreds of millions of dollars of outstanding Intercompany Claims as of the Petition Date, many of which date back a decade or more. While the Debtors have kept records of the "net" Intercompany Claim position for their various "cost centers" or "profit centers," the Debtors have not always tracked to which legal entity the amounts are owed. For example, the Debtors' records may reflect that Oldco M Sintered Components, LLC owed Intercompany Claims in a particular amount as of the Petition Date, but would not reflect to which Debtor(s) (or other) entity the amount was owed. A complete list of the Debtors' net Intercompany Claim positions, as of March 2009, is attached hereto as Exhibit F.

17. In order to reconstruct full Intercompany Claim positions, I or an employee at my direction would have to review each of the documents underlying any intercompany debt. It likely would take thousands of hours of work to reconstruct the Intercompany Claims. Even after such work was performed, it is uncertain whether the Intercompany Claims information would be entirely accurate, due to a lack of visibility in many cases into the underlying basis for older claims, particularly historical claims that were already on a particular Debtor entity's books and records when that entity was purchased by the Metaldyne group of companies and that simply carried over onto Metaldyne books and records.

⁶ Indeed, the Debtors have filed the majority of their state tax returns (including those for Michigan) on a consolidated basis.

18. *Unwinding the Debtors' Corporate Affairs:* In my opinion, it would likely be impossible to untangle each of the Debtors' financial affairs so that all of the Debtors' financial and accounting records could be broken down on a legal entity basis, due to the fact that not all original documents accurately reflect the appropriate legal entity. To the extent such disentanglement of such records is possible, it would require the Debtors to locate and review tens of thousands of pages of original documents, which could take in excess of thousands of hours.

Expectations of the Debtors' Trade Creditors

19. *Expectations of Trade Creditors.* One of my duties as an employee of the Debtors was to respond to trade creditors' inquiries regarding requests for the Debtors' financial information. In this role, I did not see evidence that the Debtors' trade creditors relied on the separate identities of the Debtor entities when extending credit to the Debtors. Indeed, the Debtors did not provide trade creditors with financial information on a Debtor-by-Debtor basis upon which judgments regarding the creditworthiness of a particular Debtor could have been made because such information was not reported or kept by the Debtors on a legal entity basis, as described above. In addition, other than one instance of which I am aware involving a real property lessor, the Debtors' trade creditors did not, when performing business with one Debtor, seek guaranties from other Debtors as a condition of doing business with the Debtors.

Value of the Debtors' Assets

20. *Valuation of Assets.* The most recent full appraisal of the Debtors' assets that I am aware of was conducted in early 2007. While this appraisal was updated on a "desktop" basis in early 2009 (which did not involve the appraiser actually reviewing the assets being appraised), I believe that, in this economic environment, reliance on this appraisal would

be unreliable because the market has changed dramatically since 2007. Indeed, certain of the assets that were sold to MD Investors as part of the Sale Transaction, which were also appraised by the Debtors in 2007 and updated in 2009, have been fully appraised by MD Investors since the Closing. The value of these assets has changed dramatically since the Debtors' appraisals, and there is no reason to believe that the assets maintained by the Debtors would not have also changed.

21. Moreover, reliance upon book value of the Debtors' assets would be unreliable and would overstate the value of assets in most instances, as book values for the Debtors' assets far exceeded fair market value in most instances, as evidenced by the fact that the potential bids for those assets received by the Debtors while marketing their businesses during 2009 rarely were close to the book value for those assets.

My Role with Respect to Schedules of Assets

22. *Schedules of Assets.* I was the employee of the Debtors charged with gathering the information necessary to complete the Debtors' schedules of assets in the summer of 2009. To determine where to identify certain assets on the Debtors' schedules, in many cases I, or the employees working at my direction, in consultation with the Debtors' professionals, made good faith simplifying assumptions (many of such assumptions were identified in the footnotes to the schedules of assets) instead of performing complicated and time-consuming factual analyses referenced above that would be needed to allocate every asset or liability on a legal entity basis, which, as noted above, cannot be effected for all assets and liabilities.

Executed this 17th day of February, 2010 in Plymouth, Michigan.

/s/ Jan Van Dijk
Jan Van Dijk