

Hearing Date and Time: March 2, 2010, 10:00 a.m. (ET)  
Response Deadline: February 23, 2010 at 4:00 p.m. (ET)

JONES DAY  
222 East 41st Street  
New York, New York 10017  
Telephone: (212) 326-3939  
Facsimile: (212) 755-7306  
Richard H. Engman

- and -

JONES DAY  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
Telephone: (216) 586-3939  
Facsimile: (216) 579-0212  
Heather Lennox  
Ryan T. Routh  
Daniel M. Syphard

Attorneys for Debtors  
and Debtors in Possession

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

-----X  
In re : Chapter 11  
Oldco M Corporation :  
(f/k/a Metaldyne Corporation), *et al.*, : Case No. 09-13412 (MG)  
Debtors. : (Jointly Administered)  
: :  
-----X

**CONSOLIDATED REPLY TO RESPONSES TO OMNIBUS  
OBJECTIONS OF DEBTORS AND DEBTORS IN POSSESSION SEEKING TO  
DISALLOW CERTAIN PENSION CLAIMS FILED BY CURRENT OR FORMER  
EMPLOYEES OF THE DEBTORS (OMNIBUS OBJECTIONS NOS. 10, 12, 14 AND 16)**

TO THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE:

Oldco M Corporation (f/k/a Metaldyne Corporation) and 30 of its domestic direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"),<sup>1</sup> respectfully represent as follows:

**Background**

1. Steven Allor, Margaret Lockwood, Michael Dougherty and Norman Gerald Hilliker (collectively, the "Responding Claimants") filed claim numbers 580, 1144, 2744 and 2785 (collectively, the "Claims"), respectively, which assert liabilities owed by the Debtors under the Metaldyne Corporation Pension Plan (the "Pension Plan").

2. On January 29, 2010, the Debtors filed omnibus objections numbered 9 through 20 (collectively, the "Objections") which seek to disallow claims asserting liabilities owed under the Pension Plan, as those claims are property of the PBGC and not the individual claimants. See Docket Nos. 1259-1270.

3. Steven Allor informally responded to Omnibus Objection No. 10 by a letter dated February 2, 2010, which has not been docketed to date. The informal letter response asserts that Omnibus Objection No. 10 should be denied with respect to his claim as Oldco M Corporation should be "held responsible" for obligations owed to him under the Pension Plan and any amount not guaranteed by the Pension Benefit Guaranty Corporation (the "PBGC").

4. Margaret Lockwood filed a letter response to Omnibus Objection No. 16 on February 8, 2010 (Docket No. 1303). In this response, Margaret Lockwood requests that the Court deny the objection on the basis that pension payments are vital to her everyday existence.

---

<sup>1</sup>

All capitalized terms not defined herein shall have the meanings given to them in the Objections.

Jones Day, as counsel to the Debtors, has discussed this response with Ms. Lockwood, and Ms. Lockwood informed Jones Day that she did not intend to oppose the relief in the objection. Pursuant to this conversation, the Debtors believe that Ms. Lockwood no longer opposes the relief requested in the objection.

5. Michael Dougherty filed a letter response to Omnibus Objection No. 12 on February 22, 2010 (Docket No. 1386). In this response, Michael Dougherty requests that the Court deny the objection as it relates to his claim on the basis that he is owed a pension of \$219.37 a month starting at age 65 under the Pension Plan.

6. Gerald Hilliker filed a letter response to Omnibus Objection No. 14 on February 22, 2010 (Docket No. 1387). In this response, Gerald Hilliker requests that the Court deny the objection on the basis that the pension payments are obligations of the Debtors.

7. The Debtors or their professionals have contacted the PBGC to confirm, and PBGC did so confirm, that all of the Responding Claimants are pension participants under the Pension Plan, which is currently being administered by the PBGC.

### **Argument**

8. As set forth in the Objections, the PBGC is a federal government agency that administers the qualified defined benefit pension plan termination insurance program established by Title IV of ERISA. When a pension plan terminates without sufficient assets to pay all of its promised benefits, the PBGC typically becomes the trustee of the plan and pays the plan participants their pension benefits subject to certain statutory limits. See 29 U.S.C. §§ 1321, 1322, 1341, 1344, 1361. Here, the PBGC involuntarily terminated the Debtors' qualified defined benefit pension plan effective July 31, 2009.

9. Pursuant to ERISA, the Debtors are obligated to the PBGC (and not the individual plan participants) for the "total amount of the unfunded benefit liabilities (as of the termination date) to all participants and beneficiaries under the plan . . . ." 29 U.S.C. § 1362(b)(1)(A). After the termination of a qualified defined benefit pension plan, the PBGC is the only entity entitled to recover from an employer on account of unfunded benefit liabilities. See United Steelworkers of Am. v. United Eng'g, Inc., 52 F.3d 1386, 1389-90 (6th Cir. 1995) (holding that the PBGC was the sole entity entitled to assert claims arising from the termination of qualified defined benefit plans and observing that the text of ERISA "strongly implies that Congress intended the PBGC to be the sole source of recovery of payment to employees"). Indeed, the PBGC has filed claims in these bankruptcy cases, and such claims have been allowed by the Court. See Order Approving Settlement Agreement Between Debtors and Debtors in Possession and the Pension Benefit Guaranty Corporation (Docket No. 1383) (allowing claim number 2694 and 2695 filed by the PBGC on account of pension related obligations).

10. Moreover, case law holds, under ERISA, a pension plan participant is not entitled to a claim from the difference between their full retirement benefits and the amount they would receive from the PBGC under a terminated pension plan. See Ricke v. Armco, Inc., 882 F. Supp. 896, 901 (D. Minn. 1995) (citing United Engineering in holding that plan participants may not sue for non-guaranteed benefits under certain amendments to ERISA); In re Lineal Group, Inc., 226 B.R. 608, 612-13 (Bankr. M.D. Tenn. 1998) (concluding that participants' direct claims for the differential between their full retirement benefits and the amount they would receive from the PBGC are preempted by ERISA).

11. Under ERISA and case law interpreting the same, the Debtors are only obligated to the PBGC — not the Claimants — for the obligations under the Pension Plan. If the

Claimants hold valid claims, they are entitled by law to receive any guaranteed pension benefits from the PBGC. Moreover, as set forth above, case law sets forth that pension claimants may not assert claims for the non-guaranteed portion of their pension; as such, Mr. Dougherty's assertion that the Debtors' should be responsible for the non-guaranteed portion of his pension, if there is such a non-guaranteed portion, is unfounded. Lastly, if the Claims were allowed, the Debtors would be forced to make duplicate payments to both the PBGC and the Claimants for the same liability, which would be detrimental to the other stakeholders in these cases.

12. Section 502(b)(1) of the Bankruptcy Code requires a court to disallow a claim when "such claim is unenforceable against the debtor and property of the debtor, under an agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). The Debtors respectfully submit that the Claims cannot, as a matter of law, state an allowable claim against the Debtors because the Debtors' obligations under the Pension Plan are claims that, under applicable law — ERISA— belong to the PBGC, and not to the Claimants as beneficiaries under the Pension Plan.

Dated: February 25, 2010  
New York, New York

Respectfully submitted,

/s/ Ryan Routh

---

Richard H. Engman  
JONES DAY  
222 East 41st Street  
New York, New York 10017  
Telephone: (212) 326-3939  
Facsimile: (212) 755-7306

- and -

Heather Lennox  
Ryan T. Routh  
Daniel M. Syphard  
JONES DAY  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
Telephone: (216) 586-3939  
Facsimile: (216) 579-0212

ATTORNEYS FOR DEBTORS AND  
DEBTORS IN POSSESSION