

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

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

**ORDER ESTABLISHING PROCEDURES
GOVERNING ADVERSARY PROCEEDINGS BROUGHT PURSUANT
TO SECTIONS 547 AND 550 OF THE BANKRUPTCY CODE**

Upon the motion (the “Motion”)¹ dated March 11, 2011 of Executive Sounding Board Associates Inc. (the “Trustee” or “Movant”), the liquidating trustee of the Oldco M Distribution Trust (the “Trust”), by and through its attorneys, for an Order pursuant to sections 105(a), 547 and 550 of the Bankruptcy Code, Rules 7016 and 7026 of the Bankruptcy Rules, and General Order M-390 of the United States Bankruptcy Court for the Southern District of New York, establishing procedures governing the Avoidance Actions; and this Court having jurisdiction to consider and determine the Motion as a core proceeding in accordance with 28 U.S.C. §§ 157 and 1334 and the Plan; and due notice of the Motion having been provided no further notice being required; and it appearing that the relief requested by the Motion is necessary and in the best interests of the parties; and sufficient cause appearing therefor, it is hereby:

ORDERED, that the Motion be, and hereby is, granted in all respects; and it is further

ORDERED, that the procedures governing all parties to the Avoidance Actions, attached hereto as Exhibit “1” and incorporated herein by reference (the “Avoidance Action Procedures”) are hereby approved and shall govern the Adversary Proceedings, effective as of the date of this Order.

¹ Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Motion.

ORDERED, that the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules shall apply to the Adversary Proceedings, except to the extent that they conflict with the Avoidance Action Procedures.

ORDERED, that the time periods set forth in this Order and the Avoidance Action Procedures shall be calculated in accordance with Bankruptcy Rule 9006(a).

ORDERED, that the requirement under Local Bankruptcy Rule 9013-1 to file a memorandum of law in connection with the Motion is hereby waived.

ORDERED, that this Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2011

The Honorable Martin Glenn
United States Bankruptcy Judge

Exhibit 1

AVOIDANCE ACTION PROCEDURES

Extension of Time to Serve Avoidance Actions Pursuant to Bankruptcy Rule 7004

i. The time period pursuant to Federal Rule of Civil Procedure 4(m), made applicable to the Avoidance Actions by Bankruptcy Rule 7004, by which the Trustee must serve the summons and complaint on each Defendant shall be extended for an additional one hundred and twenty (120) days, without prejudice to the Trustee to seek further extensions of time for cause shown. It is anticipated, however, that the Trustee will serve the summons and complaints as promptly as practicable after issuance of the summons.

Stipulation to Extend Time for Defendants to Respond to the Complaint, Mediation before Response

ii. For any Defendant that received more than \$50,000.00 in transfers during the 90 days before the Petition Date, without further order of the Court, the parties may stipulate to up to three (3) separate extensions of time for a Defendant to respond to the Complaint (the “Response Due Date”), with each extension to be of no more than thirty (30) days each. The stipulation must be in writing to be binding on the Trustee.

iii. For any Defendant that received less than \$50,000.00 in transfers during the 90 days before the Petition Date, without further order of the Court, the parties may stipulate to up to five (5) separate extensions of time for a Defendant to respond to the Complaint (the “Response Due Date”), with each extension to be of no more than thirty (30) days each. The stipulation must be in writing to be binding on the Trustee.

iv. If the parties jointly agree in writing (which writing shall be filed in the adversary proceeding) to enter mediation prior to the Response Due Date, the Response Due Date shall be deferred while the mediation is pending. If the mediation does not resolve the Avoidance Action, the Response Due Date shall be extended for an additional thirty (30) days following the completion of mediation and the filing of the mediator’s report.

v. Except as set forth in paragraphs b and c (above), further extensions of the Response Due Date shall not be granted except upon a motion or by stipulation of the parties, approved by Order of this Court.

Stay of Requirement to Conduct Rule 26(f) Conference

vi. The conference required by Federal Rule of Civil Procedure 26(f), made applicable herein pursuant to Bankruptcy Rule 7026 (mandatory meeting before scheduling conference/discovery plan), shall be stayed until the completion of mediation and, if the matter is not resolved at the mediation, then after the Defendant’s response is filed. Following the filing of the Mediator’s Report (as defined herein) and assuming the Avoidance Action was not resolved during the

mediation, the parties shall conduct a Rule 26(f) conference and submit a discovery scheduling order (the “Scheduling Order”) to the Court prior to or at the Pretrial Scheduling Conference (as defined herein).

Stay of Requirement to Conduct Pretrial Conference

vii. The conference required by Federal Rule of Civil Procedure 16, made applicable herein pursuant to Bankruptcy Rule 7016, shall be stayed until the completion of mediation. Accordingly, the summons filed and served by the Trustee will not include a date for a pretrial conference. Upon the filing of the Mediator’s Report (as defined herein), with respect to each adversary proceeding that is not resolved through mediation or otherwise, the Trustee shall file with the Court and serve on the Defendant a notice of pretrial scheduling conference (the “Pretrial Scheduling Conference”) to take place in the adversary proceeding at the next scheduled Omnibus Hearing; provided, however, that a minimum of fourteen (14) days notice of the Pretrial Scheduling Conference is required.

Stay of Discovery

viii. All formal discovery shall be stayed until after a Scheduling Order is entered and after the Scheduling Conference has occurred in accordance with these Proposed Procedures; provided, however, this stay of discovery shall in no way preclude the parties from informally exchanging documents and other information in an attempt to resolve an Avoidance Action in advance of, or during, the mediation process.

Settlement of Avoidance Actions

ix. The Trustee is authorized to compromise or settle the Avoidance Actions without court approval, as provided in section 4.10 of the Distribution Trust Agreement. In the event of a settlement, the Trustee shall file a Notice of Settlement with the Court within ten (10) days of the later of (i) the parties’ execution of the settlement agreement; or (ii) the date of payment of any amount due under the settlement agreement.

Mediation of Motions to Dismiss

x. If a Defendant files a motion under Federal Rule of Civil Procedure 12(b)(6) (made applicable by Bankruptcy Rule 7012) for failure to state a claim (a “Motion to Dismiss”), in response to the complaint, the issues raised in such Motion to Dismiss, together with the issues raised in the complaint, shall be immediately referred to mediation; provided, however, that if the parties mutually agree that mediation is unlikely to resolve the issues raised by any such Motion to Dismiss, that motion will not be referred to mediation and, instead, the parties will jointly request in a letter to the Court that the Court hear the motion on such schedule as the Court may determine.

xi. To the extent a party files a motion other than a motion under Federal Rule of Civil Procedure 12(b)(6), then the issues raised in that motion will not be referred to mediation and the Court will hear the matter on such schedule as either the local rules provide and/or the Court may determine, unless the parties otherwise agree to refer the issues raised in the motion to arbitration.

Mediation Procedures and Requirements

xii. To the extent an Avoidance Action has not been resolved and/or settled within thirty (30) days after an answer or motion to dismiss pursuant to Rule 12(b)(6) is filed, then said Avoidance Action (the “Remaining Avoidance Actions”) shall be referred to mandatory mediation. Within two weeks thereafter (the “Mediation Deadline”), the Defendant and the Trustee shall jointly choose a mediator (the “Mediator”) from the list of mediators on Exhibit “B” (the “Mediator List”) and the Trustee shall file a “Notice of Mediator Selection” with the Court on or before the Mediation Deadline. If the parties are unable to agree on a mediator, the Court shall appoint one from the Mediator List.

xiii. A party shall participate in mediation unless excused from the obligation to mediate by Order of this Court for good cause shown.

xiv. The Mediator’s fees shall be split equally by the parties, and payment arrangements reasonably satisfactory to the Mediator must be completed on or prior to the commencement of the mediation.

xv. Promptly after the filing of the Notice of Mediator Selection, the Trustee and Defendant’s counsel (or the Defendant, if appearing *pro se*) shall jointly contact the selected Mediator to discuss the mediation. The mediation will be scheduled within sixty (60) days of the filing of the Notice of Mediator Selection.

xvi. The mediation shall take place in New York, New York and shall be held at the Mediator’s office or at another location agreed upon by the parties.

xvii. A party may participate in a mediation via telephone if (i) in-person attendance at the mediation is not possible; and (ii) the Mediator consents.

xviii. Except as set forth herein, the mediation shall be conducted in accordance with General Order M-390 which is available on the Court’s website (<http://www.nysb.uscourts.gov/>).

xix. The parties shall exchange position statements (“Position Statements”), which may not exceed ten (10) pages double-spaced in 12 point type (exclusive of exhibits and schedules), at least ten (10) days prior to the scheduled mediation. The Mediator may also require the parties to provide to the Mediator any relevant papers and exhibits as well as a settlement proposal.

xx. The Mediator will preside over the mediation with full authority to determine the nature and order of the parties’ presentations and with the full

authority to implement any additional procedures which are reasonable and practical under the circumstances.

xxi. Each mediation shall have a 6 hour time limitation; however, the parties may extend the time for the mediation by agreement. The Mediator may adjourn a mediation that has been commenced if the Mediator determines that an adjournment is in the best interests of the parties.

xxii. The parties shall participate in the mediation in good faith and with a view toward reaching a consensual resolution. The mediation(s) shall be attended by a representative of the Defendant with full settlement authority and, if a Defendant is represented, their counsel, as well as counsel for the Trustee (who must have settlement authority from the Trustee).

xxiii. Unless otherwise consented to in writing by the parties, no Mediator shall mediate an Avoidance Action in which the Mediator or the Mediator's law firm currently represents a party with respect to any Avoidance Actions.

xxiv. All proceedings and writings incident to the mediation will be considered privileged and confidential, and shall not be reported or admitted in evidence for any reason whatsoever. Nothing stated or exchanged during a mediation shall operate as an admission of liability, wrongdoing or responsibility.

xxv. The mediation shall be conducted so as to be completed within one hundred and twenty (120) days after the date the Notice of Mediator Selection is filed, which deadline may be extended by the mutual consent of the parties and the Mediator.

xxvi. If a party (a) fails to submit the required position statement or other submissions as provided in these Proposed Procedures or as may be agreed to by the Mediator or ordered by the Court, or (b) fails to attend the mediation, then the non-defaulting party may file a motion for default judgment or a motion to dismiss the adversary proceeding, as applicable.

xxvii. Within ten (10) days after the conclusion of each mediation, the Mediator shall file a report (the "Mediator's Report") in the Remaining Avoidance Action, which shall be limited to stating only (i) whether the Remaining Avoidance Action settled or did not settle; (ii) the date or dates the mediation took place; and (iii) the names of the parties and/or counsel who attended.

Avoidance Actions Omnibus Hearings

xxviii. The Court will schedule regular Omnibus Hearing dates in the bankruptcy case, on which dates any post-mediation Pretrial Scheduling Conference will take place. Any pretrial motions filed by the parties in the Avoidance Actions must be set for hearing on one of the Omnibus Hearing dates unless otherwise ordered by the Court.

Motions Affecting all Avoidance Actions

xxix. Any motions filed by the Trustee that affect all of the Avoidance Actions shall be filed in the bankruptcy case and not in each separately docketed Avoidance Action; provided, however, that each Defendant shall receive notice of the filing of the same.