

MORITT HOCK HAMROFF & HOROWITZ LLP
Attorneys for Key Equipment Finance, a division of
Key Corporate Capital, Inc.
400 Garden City Plaza
Garden City, NY 11530
(516) 873-2000
Marc L. Hamroff
mhamroff@moritthock.com
Leslie A. Berkoff
lberkoff@moritthock.com

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 11
Case No. 09-13412 (MG)

METALDYNE CORPORATION,

Debtors.

-----X

**LIMITED OBJECTION OF KEY EQUIPMENT FINANCE
TO DEBTORS' MOTION FOR ORDER AUTHORIZING AND
APPROVING POST-PETITION FINANCING, USE OF
CASH COLLATERAL AND RELATED RELIEF**

Key Equipment Finance ("Key"), by and through its attorneys Moritt Hock Hamroff & Horowitz LLP, hereby objects to the Motion filed by the Debtors in the above-captioned Chapter 11 cases (the "Debtors") for an Order Authorizing and Approving Post-Petition Financing and seeking permission for the use of cash collateral (the "Motion") respectfully sets forth and represents as follows:

PRELIMINARY STATEMENT

1. By this limited objection, Key seeks clarity on two (2) points. First, the Motion seeks a final order of the use of cash collateral, the budget must make provision for the payment of Key's significant monthly lease payments on equipment essential to the Debtors' operation. A review of the budget attached to the Motion leaves uncertain the Debtors' fulfillment of its

obligations under Section 365(d)(5) of the Bankruptcy Code. Second, since Key owns its leased equipment, there cannot be a grant of a security interest therein under the DIP Credit Facility.¹

As a precautionary measure, Key filed UCC-1 financing statements in the event it is necessary to establish its first priority lien and security interest in certain of the Debtors' equipment. To that end, Key does not consent to a subordinate lien under Section 364(c)(3) or a priming lien under Section 364(d)(1) of the Bankruptcy Code. Key objects to any financing proposed by the DIP Lenders or otherwise that would seek to place a lien on equipment owned by Key and leased to the Debtors.

RELEVANT BACKGROUND

Master Lease Agreement

2. Pursuant to various leases including, most significantly, a Master Equipment Lease Agreement (No. 48123) dated as of July 11, 2002 between Key and one of the Debtors, Metaldyne Corporation (the "Master Lease"), Key leased to the Debtors certain equipment identified on equipment schedules executed in connection therewith and subject to the terms of the Master Lease. What follows is a summary of the essential terms of the five (5) remaining leases, two (2) of which are expired and currently on month-to-month extensions pending agreement between Key and the Debtors as to a purchase price, or otherwise the Debtors' return of the leased equipment to Key.

¹ Capitalized terms used have been defined in the Motion, unless otherwise defined herein.

Lease #	Rent Start Date / Commence Date	Maturity Date	Orig Equip Cost/ Acq Cost US\$	Monthly Payment	Next Due Date	# Months Remaining Original Term	\$ Remaining Gross Rental
OCE5002889	6/1/2005	2/1/2010	\$41,046	\$877.20	6/1/2009	8	\$7,017.60
KPF0000815	1/21/2005	1/21/2008	\$25,954	\$589.54	5/21/2009	NA	Month-to-Month
8800022347	1/1/2003	1/1/2010	\$3,549,507	\$46,826.99	6/1/2009	7	\$327,788.93
8800023286	10/1/2003	10/1/2011	\$8,451,494	\$92,022.03	6/1/2009	27	\$2,484,594.81
8800023675	2/1/2004	2/1/2009	\$109,467	NA	NA	NA	Month-to-Month

3. The outstanding balance of rentals that remain is approximately \$2,800,000, and, in addition, Key owns the residual rights to all leased equipment.²

ARGUMENT

4. Section 364(d)(1) of the Bankruptcy Code provides that:

[t]he court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if-

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1). The granting of "priming" liens under Section 364 of the Bankruptcy Code is an "extraordinary" remedy. *See In re Seth Co., Inc.*, 281 B.R. 150, 153 (Bankr. D. Conn. 2002).

5. The Debtors have not demonstrated entitlement to relief pursuant to Section 364(d)(1) of the Bankruptcy Code with respect to the equipment covered by the Master Lease. Pursuant to subpar. (d) on pages 5-6 of the Interim Order dated May 29, 2009, the Debtors

² Key also holds a letter credit issued by JP Morgan Chase Bank, N.A. Nothing contained in this Limited Objection constitutes a waiver of any of Key's rights thereunder.

suggest that Third Party Liens would remain senior to the DIP Lenders to the extent the Third Party Liens were senior pre-petition. As such, Key is entitled to a specific finding that the equipment covered by the Master Lease is not subject to the granting provisions of the DIP Facility. Key has filed, albeit precautionary, UCC Financing Statements covering its equipment. Moreover, as stated earlier, the equipment is leased to, not owned by, the Debtors and thus the Debtors cannot grant any security interest in the same to the DIP Lenders. Under these circumstances, a priming lien of any kind would be inappropriate. *See In re The Colad Group, Inc.*, 324 B.R. 208, 223 (Bankr. W.D.N.Y. 2005).

6. Moreover, a review of the eleven (11) week budget annexed as Exhibit "D" to the Motion reveals a one line item for "Leases". Key cannot ascertain whether this covers real or personal property leases or both. Nor can Key tell whether any provision is made for the payments of post-petition equipment lease rentals commencing July 26, 2009 as required by Section 365(d)(5) of the Bankruptcy Code due under the Master Lease. So far, the Debtors have failed to make any post-petition rental payments to Key. Since the budget covers the period beyond July 26, 2009, appropriate provision should be made for the monthly payments to Key as indicated in the Schedule above.

CONCLUSION

WHEREFORE, Key requests that any financing order or order permitting the use of cash collateral proposed to this Court for entry provide that (i) any borrowings permitted thereby shall be subject to the claims and liens of Key in the equipment described in the Master Lease; (ii) nothing contained therein shall be deemed to prime the liens of Key or otherwise grant a lien on the equipment owned by Key; and (iii) the budget include and provide for the current payment due under the Master Lease.

Dated: Garden City, New York
June 15, 2009

MORITT HOCK HAMROFF & HOROWITZ LLP
Attorneys for Key Equipment Finance, a division
of Key Corporate Capital Inc.

By: /s/ Marc L. Hamroff
 Marc L. Hamroff
 Leslie A. Berkoff
400 Garden City Plaza
Garden City, NY 11530
(516) 873-2000

F:\Key Equipment Finance\Metaldyne Corporation\docs\Limited Objection to Debtor's Motion 06 15 09.doc