

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

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In re : Chapter 11
Metaldyne Corporation, *et al.*, : Case No. 09-13412 (MG)
Debtors. : (Jointly Administered)
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**ORDER, PURSUANT TO SECTION 366
OF THE BANKRUPTCY CODE: (A) PROHIBITING UTILITIES
FROM ALTERING, REFUSING OR DISCONTINUING SERVICES
TO, OR DISCRIMINATING AGAINST, THE DEBTORS ON ACCOUNT
OF PREPETITION INVOICES; (B) DETERMINING THAT THE
UTILITIES ARE ADEQUATELY ASSURED OF FUTURE PAYMENT;
(C) ESTABLISHING PROCEDURES FOR DETERMINING REQUESTS
FOR ADDITIONAL ASSURANCE; AND (D) PERMITTING UTILITY
COMPANIES TO OPT OUT OF THE PROCEDURES ESTABLISHED HEREIN**

This matter coming before the Court on the Motion of Debtors and Debtors in Possession, Pursuant to Section 366 of the Bankruptcy Code, for an Order: (A) Prohibiting Utilities from Altering, Refusing or Discontinuing Services to, or Discriminating Against, the Debtors on Account of Prepetition Invoices; (B) Determining that the Utilities are Adequately Assured of Future Payment; (C) Establishing Procedures for Determining Requests for Additional Assurance; and (D) Permitting Utility Companies to Opt Out of the Procedures Established Herein (the "Motion"),¹ filed by the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"); certain parties (collectively, the "Objecting Parties") having filed an objection to the Motion (Docket No. 169) (the "Objection"); the Court having reviewed the Motion and the Affidavit of Thomas A. Amato filed in support of the

¹ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

Debtors' first day papers (the "Affidavit") and having considered the statements of counsel with respect to the Motion at a hearing before the Court (the "Hearing"); and the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b) and (c) notice of the Motion and the Hearing was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion and the Affidavit and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein and the Objection is resolved as described herein.

2. Subject to the procedures described below, no Utility Company may (a) alter, refuse, terminate or discontinue utility services to, or discriminate against, the Debtors on the basis of the commencement of these chapter 11 cases or on account of unpaid prepetition invoices or (b) require additional assurance of payment, other than the Proposed Adequate Assurance, as a condition to the Debtors receiving such utility services.

3. A Utility Company shall be entitled to an Adequate Assurance Deposit in the amount set forth on Exhibit A to the Motion, provided that: (a) it requests such deposit in writing no later than 30 days after the Petition Date (the "Request Deadline"); (b) such requesting Utility Company does not already hold a deposit (after taking into account any valid offset of the Debtors' prepetition debts against such deposit under applicable law) equal to or greater than the Adequate Assurance Deposit (which existing deposit shall be deemed to be the Adequate Assurance Deposit); and (c) such requesting Utility Company currently is not paid in advance for its services.

4. A Utility Company's request for, and acceptance of, an Adequate Assurance Deposit shall be deemed an acknowledgement and admission from the Utility Company that the Adequate Assurance Deposit is a form of adequate assurance that is satisfactory to it, within the meaning of section 366 of the Bankruptcy Code. Likewise, any Utility Company that does not request an Adequate Assurance Deposit by the Request Deadline and does not file a Procedures Objection to opt out of the Adequate Assurance Procedures (as described below), shall be deemed to have adequate assurance that is satisfactory to it, within the meaning of section 366 of the Bankruptcy Code. Upon the sale, assignment or termination of the lease of any property for which a Utility Company provides services (a "Transfer"), whether through the Sale Processes or otherwise, any Adequate Assurance Deposit requested by, and provided to, any Utility Company pursuant to the procedures described above shall be applied to any administrative claims of such Utility Company incurred postpetition through and including the date of the Transfer. If additional funds remain after satisfaction of the Utility Company's postpetition administrative claims or at the conclusion of these chapter 11 cases, the balance of the Adequate Assurance Deposit shall be returned to the Debtors, if not returned or applied sooner.

5. The following Adequate Assurance Procedures are approved in all respects:

- (a) Any Utility Company desiring assurance of future payment for utility service beyond the Proposed Adequate Assurance must serve an Additional Assurance Request so that it is received by the Debtors by the Request Deadline at the following addresses: (i) Metaldyne, 47603 Halyard Drive, Plymouth, MI 48170 (Attn: Edward Traub and David McKee) and (ii) Jones Day, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114-1190 (Attn: Heather Lennox, Esq. and Ryan Routh, Esq.)
- (b) Any Additional Assurance Request must specify the amount and nature of the deposit that would be satisfactory to the Utility Company and (i) be

made in writing; (ii) set forth the location(s) for which utility services are provided and the relevant account number(s); (iii) describe any deposits or other security currently held by the requesting Utility Company, (iv) explain whether the Debtors prepay for the Utility Company's services or what payment terms apply to the Debtors and (v) describe any payment delinquency or irregularity by the Debtors for the postpetition period, if any.

- (c) Upon the Debtors' receipt of an Additional Assurance Request at the addresses set forth above, the Debtors shall have the greater of (i) 20 days from the receipt of such Additional Assurance Request or (ii) 40 days from the Petition Date (collectively, the "Resolution Period") to negotiate with the requesting Utility Company to resolve its Additional Assurance Request. The Resolution Period may be extended by agreement of the Debtors and the applicable Utility Company without application to or approval of the Court.
 - (d) The Debtors, in their discretion, may resolve any Additional Assurance Request by mutual agreement with the requesting Utility Company and without further order of the Court, and may, in connection with any such resolution, in their discretion, provide the requesting Utility Company with additional adequate assurance of future payment in a form satisfactory to the Utility Company, including, but not limited to, cash deposits, prepayments, other forms of security or any combination of the above, if the Debtors believe such additional assurance is reasonable.
 - (e) If the Debtors determine that an Additional Assurance Request is not reasonable, and the parties are not able to resolve such request during the Resolution Period, the Debtors will request a Determination Hearing, pursuant to section 366(c)(3)(A) of the Bankruptcy Code.
 - (f) Pending the resolution of the Additional Assurance Request at a Determination Hearing, such particular Utility Company shall be restrained from discontinuing, altering or refusing service to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.
 - (g) Other than through the Opt-Out Procedures, any Utility Company that does not comply with these Adequate Assurance Procedures shall be deemed to find the Proposed Adequate Assurance satisfactory to it and is forbidden from discontinuing, altering or refusing service on account of any unpaid prepetition charges, or requiring additional assurance of payment (other than the Proposed Adequate Assurance).
6. The following Opt-Out Procedures are approved in all respects:

- (a) A Utility Company that desires to opt-out of the Adequate Assurance Procedures must file a Procedures Objection with the Court and serve such Procedures Objection so that it is *actually received* within three business days of entry of the Order by the Debtors at the following addresses: (i) Metaldyne Legal Department, 47603 Halyard Drive, Plymouth, MI 48170 (Attn: David McKee, Esq.) and (ii) Jones Day, North Point, 901 Lakeside Avenue, Cleveland, Ohio 44114-1190 (Attn: Heather Lennox, Esq. and Ryan Routh, Esq.). Nothing shall prevent a Utility Company from serving a Procedures Objection prior to the entry of an Order in respect of this Motion.
- (b) Any Procedures Objection must (i) be made in writing, (ii) set forth the location(s) for which utility services are provided and the relevant account number(s), (iii) describe any deposits or other security currently held by the objecting Utility Company, (iv) explain whether the Debtors prepay the Utility Company's services or what payment terms apply to the Debtors, (v) explain why the objecting Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment, and (vi) specifically identify and explain the basis of the Utility Company's proposed adequate assurance requirement under section 366(c)(2) of the Bankruptcy Code.
- (c) The Debtors, in their discretion, may resolve any Procedures Objection by mutual agreement with the objecting Utility Company and without further order of the Court, and may, in connection with any such resolution and in their discretion, provide a Utility Company with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments or other forms of security, if the Debtors believe such additional assurance is reasonable.
- (d) If the Debtors determine that a Procedures Objection is not reasonable and are not able to reach a prompt alternative resolution with the objecting Utility Company, the Procedures Objection will be heard at a hearing before the Court to be held approximately 25-30 days after the Petition Date (the "Opt-Out Hearing").
- (e) Any Utility Company that does not timely file a Procedures Objection is deemed to consent to, and shall be bound by, the Adequate Assurance Procedures.

7. All Utility Companies shall be deemed to have adequate assurance of payment under section 366 of the Bankruptcy Code unless and until: (a) the Debtors, in their discretion, agree to (i) an Adequate Assurance Request or (ii) an alternative assurance of payment with the Utility Company during the Resolution Period; or (b) this Court enters an order

at the Opt-Out Hearing or any Determination Hearing requiring that additional adequate assurance of payment be provided.

8. The Debtors are authorized, in their sole discretion, to amend the Utility Service List to add or delete any Utility Company, and this Order shall apply to any such Utility Company that is subsequently added to the Utility Service List (collectively, "Additional Utility Companies"). Nothing herein constitutes a finding that any entity is or is not a Utility Company hereunder or under section 366 of the Bankruptcy Code, whether or not such entity is listed on the Utility Service List.

9. The Debtors shall serve a copy of this Order on each Utility Company listed on the Utility Service List so as to be received within three business days of the date this Order is entered, and shall also serve this Order on any Additional Utility Companies.

10. The Opt-Out Procedures shall apply to Additional Utility Companies only to the extent that a Procedures Objection made by any Additional Utility Company is filed with the Court and submitted to the Debtors and their counsel no later than 4:00 p.m. (New York time) on the date that is the earlier of (i) three business days before the Opt-Out Hearing or (ii) 10 days after service of the Order on such Additional Utility Company. The deadline for an Additional Utility Company to submit an Additional Assurance Request under the Adequate Assurance Procedures will be 15 days after the date the Order is served upon such Additional Utility Company.

11. The Objection has been resolved pursuant to the terms of an adequate assurance agreement between the Debtors and the Objecting Parties and such agreement, and not some other agreement, this Order or any other order, shall govern the adequate assurance provided to the Objecting Parties.

12. The terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

13. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: New York, New York
June 15, 2009

/s/Martin Glenn
UNITED STATES BANKRUPTCY JUDGE