Neil A. Goteiner (NG 1644)
Dean M. Gloster (*Pro Hac Vice Pending*)
Gary M. Kaplan (*Pro Hac Vice Pending*)
FARELLA BRAUN + MARTEL LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104
Tel: (415) 954-4400
Fax: (415) 954-4480

Hearing Date: October 11, 2011
Time: 3:00 p.m. ET

Objection Deadline: October 4, 2011 at 4:00 p.m. ET

Counsel for the individual trustees Gary Conley, Richard Davis, Douglas Guerdat, and Nora Quinn and the Proposed Auto Retiree VEBA Trust (Ohio, Michigan, Wisconsin)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

MOTION BY INDIVIDUAL TRUSTEES AND THE PROPOSED AUTO RETIREE VEBA TRUST FOR ORDER ESTABLISHING A VOLUNTARY EMPLOYEE BENEFIT ASSOCIATION TO OFFER RETIREE GROUP BENEFITS ELIGIBLE FOR THE HEALTH COVERAGE TAX CREDIT

The individual trustees Gary Conley, Richard Davis, Douglas Guerdat, and Nora Quinn and the proposed Auto Retiree VEBA Trust (Ohio, Michigan, Wisconsin) ("**Auto VEBA Trust**") respectfully requests an order from this Court under Bankruptcy Code Section 105 and Internal Revenue Code Section 35(e)(1)(K), to authorize the Auto VEBA Trust to form as a voluntary employee benefit association (a "**VEBA**") to offer group health, prescription drug, dental, and vision care benefits eligible for the 65% federal subsidy in the form of the Health

Coverage Tax Credit to retirees from the Debtors and other auto part companies where workers pensions have been trusteed by the Pension Benefit Guaranty Corporation ("**PBGC**").

On May 27, 2009, Oldco M Corporation, f/k/a Metaldyne Corporation and certain of its affiliates (collectively "**Debtors**") filed petitions for Chapter 11 bankruptcy reorganization administratively consolidated in case number 09-13412 (the "**Bankruptcy Proceeding"**) filed in the Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**"). During the Bankruptcy Proceeding, certain Company defined benefit pension plans were terminated in distress terminations and turned over to the PBGC, which became the replacement trustee of those plans (covering 10,770 workers) on July 31, 2009. See http://www.pbgc.gov/news/press/releases/pr09-49.html

When the petition to initiate the Bankruptcy Proceeding was filed, the Debtors' corporate headquarters and principal place of business was in Michigan. The Auto VEBA Trust is a trust organized under Ohio law to be qualified as a tax exempt VEBA under Internal Revenue Code section 501(c)(9) to provide retiree medical, prescription drug and related benefits to retirees from Debtors and retirees from other companies in the auto parts industry that have had their pensions trusteed by the PBGC, for companies (like Debtors) whose principal place of business at the time of the pension termination was in Michigan, Ohio, or Wisconsin. The Trust Agreement is attached as Exhibits A to the Declaration of Dean Gloster in Support of Motion to Authorize Trust for HCTC Benefits ("**Gloster Decl.**") filed herewith.

The individual trustees are: Gary Conley, a retiree who worked for Motor Wheel, Hayes Wheels, Hayes Lemmerz and Metaldyne, for a total of over 40 years employment in the automotive component industry. Mr. Conley was a member of the official salaried retiree committee appointed under Bankruptcy Code section 1114 in the Hayes Lemmerz auto parts company bankruptcy case and served as a trustee for the HLI VEBA set up in that case. Richard Davis, a retiree from General Motors and Delphi Corporation, where he had extensive health benefits experience, and a former trustee of the VEBA formed by order of the bankruptcy court in the Delphi Corporation bankruptcy case to provide HCTC-eligible benefits for Delphi retirees; Douglas Guerdat, who recently retired from Accenture where he was the HCTC program health plan liaison working with the Internal Revenue Service Health Coverage Tax Credit group; and Nora Quinn, an administrative law judge who hears unemployment compensation cases and was former director of (and board member of) the Disability Rights Center at Loyola University Law School. She is also on the Equity Oversight Panel for the Los Angeles County Sheriffs Department, appointed to hear employee complaints. Gloster Decl., ¶ 4. After the first year, future trustees of the Auto VEBA Trust will be elected by retirees enrolled in the trust benefits. See Gloster Decl., ¶ 5 and Exhibit A, at p. 10.

The outside professionals representing and advising the Auto VEBA Trust have previously established other HCTC-eligible benefit plans for VEBAs under orders entered by bankruptcy courts (including for the pilots of Delta Air Lines, Inc.), and have assisted those VEBAs in rolling out HCTC-eligible benefits. Gloster Decl., ¶ 7.. They have been working for over a year with vendors to ensure that they will be able to obtain a competitive quote for the cost of benefits for retirees eligible for the benefits to be sponsored by the Auto VEBA Trust despite the lack of census and claims data for the eligible retiree population. Gloster Decl. ¶ 6. As in other cases, they expect to coordinate with IRS HCTC program personnel to assure that current efforts are fully compliant and the resulting benefits eligible for the HCTC subsidy. Because this program is designed to be launched without claims or census data provided by the former employer, neither the liquidating trust nor the asset purchaser from the Reorganized

Debtors will have to incur future costs or expend efforts in connection with the Auto VEBA Trust's operations. Gloster Decl., ¶ 6.

Future administrative costs of the Auto VEBA Trust will be paid out of a small administrative fee that will be part of the benefit cost for those who enroll in the benefits. Gloster Decl., ¶ 8. The insurance broker and undersigned counsel will only be paid if the proposed Auto VEBA Trust is actually authorized, provides a benefit, and retirees enroll in the benefit, out of broker's commissions substantially identical to those agreed by the Delta Air Line pilots organization DP3 and the Association of Flight Attendants-CWA in connection with similar VEBAs established (or about to be established) in other bankruptcy cases. Gloster Decl., ¶ 7. Any compensation of trustees for running the proposed Auto VEBA Trust is capped at a maximum of $9,000 a year under the Trust Agreement, and that provision of the Trust Agreement may not be amended by the trustees. See Gloster Decl., ¶ 3, Exhibit A, p. 7.

Prior to filing this motion, counsel for the trustees and proposed Auto VEBA Trust provided advanced copy of this motion to the Debtors' counsel, counsel for the asset buyer successor to the Debtors, counsel for the Liquidating Trustee under the Debtors' confirmed Plan of Reorganization, and counsel to the PBGC in the bankruptcy proceeding. Gloster Decl. ¶ 9. Counsel for the PBGC emailed in response that the PBGC has no objection to the motion. *Id.*

As discussed below, granting the relief sought here will allow thousands of retirees from the Debtors and other auto parts companies who have had their pension plans terminated and trusteed by the PBGC to obtain tax credit-subsidized group health benefits without cost to the Debtors or the successor by asset purchase to the Debtors, and will not delay closing of the case.

Legal Background

The Health Coverage Tax Credit ("HCTC"), codified in Internal Revenue Code Section 35(e)(1), 26 U.S.C. § 35(e)(1), provides a health care subsidy for those aged 55 or older (but not yet 65 and eligible for Medicare) who have had their pension plans turned over to and trusteed by the PBGC. See 26 U.S.C. § 35(e)(1)(J)(iii). This tax credit now pays sixty-five percent (65%) of the cost of the retirees' health insurance and prescription drug premiums (and dental and vision care premiums of any combined program) for retirees until they turn 65 and become eligible for Medicare. (It also pays 65% of the premium cost for the benefits of their spouses and dependants.) See 26 U.S.C. § 35(g)(9)(A).[1] Currently, draft reauthorization legislation tied to the South Korean Free Trade bill would increase the subsidy to 72.5%.[2] For many retirees, living on reduced pensions, the HCTC subsidy allows them to be able to pay for critical and even essential life-saving medical care.

The HCTC is an unusual federal tax credit, because instead of being paid to the taxpayer only at the end of the year, the eligible retirees can participate in a monthly reimbursement program, the IRS HCTC advanced payment program, which pays a portion of the premiums each month for the healthcare benefits of eligible retirees (and their spouses and dependants) enrolled in "qualified health insurance." "Qualified health insurance" under the statute[3] now includes—since the amendments adopted in February 2009 as part of the American Recovery and Reinvestment Act—coverage under a benefit provided by a VEBA that is established by a

[1] The subsidy was originally 65% but was increased to 80% in the American Recovery and Reinvestment Act. The increased subsidy recently lapsed and returned to a 65%, subsidy, but pending legislation would increase it again.

[2] See S.1117, http://www.govtrack.us/congress/billtext.xpd?bill=s112-1117

[3] Qualified health insurance also includes, inter alia, (1) COBRA continuation coverage as specifically defined, 26 U.S.C. § 35(e)(1)(A); and (2) coverage under state plans that have been qualified in many states (but which are not available in all states and which in many states provide only catastrophic coverage of last resort with low benefits and high deductibles), 26 U.S.C. § 35(e)(1)(H). Because retirees' COBRA coverage often lapses before they turn 65 or they did not timely elect COBRA coverage because, for example, they were then covered under a spouse's plan, COBRA is often not an option

representative of retirees under Bankruptcy Code Section 1114 or otherwise "pursuant to an order of a bankruptcy court."[4] 26 U.S.C. § 35(e)(1)(K). The Auto VEBA Trust is seeking an order from this Court authorizing its formation as a VEBA to sponsor retiree group benefits eligible for the 65% HCTC subsidy.

Formation of a VEBA under the authorizing order of this Court will allow the VEBA to work with national vendors (such as Aetna, MetLife and CIGNA) to get competitive quotes on a group program designed with the needs of the retirees in mind.

The VEBA would be a separate tax-exempt trust qualified under Internal Revenue Code section 501(c)(9), 26 U.S.C. § 501(c)(9).

Requested Relief

The individual trustees of the Auto VEBA Trust seeks an order from this court under Bankruptcy Code Section 105 and Internal Revenue Code section 35(e)(1)(K), authorizing them to be form a VEBA to offer a group benefit eligible for the HCTC under Internal Revenue Code section 35(e)(1)(K), 26 U.S.C. § 35(e)(1)(K), which requires the order of a bankruptcy court to create that eligibility.

If the Court grants the requested relief, thousands of retirees who are living on smaller than expected incomes because of termination of their defined benefit pension plans, in the most difficult and expensive to insure age bracket—old enough for age-related medical expenses, but not old enough to be eligible for Medicare--will have the opportunity to obtain affordable, tax credit-subsidized medical, prescription drug, vision care, and dental benefits at no cost to the

[4] Internal Revenue Code section 35(e)(1)(k), added by section 1899G(a) of the American Recovery and Reinvestment Act, (as amended by Section 117 of the Omnibus Trade Act of 2010, H.R. 6517, signed into law on December 29, 2010) provides that qualifying coverage includes "eligible coverage months beginning before February 13, 2012, coverage under an employee benefit plan funded by a voluntary employees' beneficiary association (as defined in section 501(c)(9)) established pursuant to an order of a bankruptcy court, or by agreement with an authorized representative, as provided in section 1114 of title 11, United States Code." 26 U.S.C. § 35(e)(1)(K). Internal Revenue Code section 501(c)(9) is the provision authorizing voluntary employee benefit associations as non-profit tax exempt entities. 26 U.S.C. § 501(c)(9).

Debtors or the successor by asset purchase to the Debtors. This may also create possible long term savings to the successor by asset purchase to the Debtors.[5]

Conclusion

The individual trustees of the Auto VEBA Trust respectfully request that this Court enter the proposed order authorizing formation of the Auto VEBA Trust as a VEBA to roll out an HCTC-eligible group benefit for retirees of the Debtors and their spouses, dependants and survivors, and similarly situated retirees from other auto parts companies headquartered in Michigan, Ohio, or Wisconsin whose pensions have been terminated and trusteed by the PBGC. The requested order will allow retirees and their dependants who have already lost much of their pensions to save, collectively, millions of dollars through federal tax subsidies for their critical health care benefits, and may reduce costs and administrative burdens on the successor by asset purchase from the Debtors for years into the future.

Respectfully submitted,

Dated: September 12, 2011

FARELLA BRAUN + MARTEL LLP

By: /s/______________________________
Dean M. Gloster

Counsel for the individual trustees Gary Conley, Richard Davis, Douglas Guerdat, and Nora Quinn and the Proposed Auto Retiree VEBA Trust (Ohio, Michigan, Wisconsin)

[5] The availability of subsidized benefits from the Auto VEBA Trust may lead to fewer retirees who are in the most expensive age brackets electing expensive COBRA continuation coverage upon leaving employment with the successor by asset purchase to the Debtors and will provide tax-credit subsidized retiree medical care to its retirees who were former workers of Debtors, all at no cost to the successor by asset purchase to the Debtors.