

Hearing Date: December 1, 2011  
Hearing Time: 10:00 A.M. (ET)

**FOX ROTHSCHILD LLP**

75 Eisenhower Parkway, Suite 200  
Roseland, NJ 07068  
973-992-4800

- and -

100 Park Avenue, 15<sup>th</sup> Floor  
New York, NY 10017

rmeth@foxrothschild.com

RICHARD M. METH, ESQ. (RM7791)(admitted *pro hac vice*)

- and -

**GREENEBAUM DOLL & MCDONALD PLLC**

3500 National City Tower  
101 South Fifth Street  
Louisville, KY 40202

C. R. BOWLES, ESQ. (admitted *pro hac vice*)

502-589-4200

*Attorneys for DSSI, LLC*

**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)

**RESPONSE OF DSSI LLC TO OMNIBUS OBJECTION OF  
OLDCO M. DISTRIBUTION TRUST SEEKING TO DISALLOW,  
REDUCE, LIQUIDATE, EXPUNGE AND RECLASSIFY CERTAIN CLAIMS**

TO: THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE

DSSI LLC (“DSSI”), by and through counsel, hereby files its response (“Response”) to the Omnibus Objection (“Objection”) of Oldco M. Distribution Trust (“Oldco Trust”) Seeking to

Disallow, Reduce, Liquidate, Expunge and Reclassify Certain Claims. In support of its Response, DSSI states as follows:

**Background**

1. On May 27, 2009 (“Petition Date”), Oldco M. Corporation (f/k/a Metaldyne Corporation) and 30 of its domestic direct and indirect subsidiaries (collectively, the “Debtors”) filed voluntary petitions (“Bankruptcy Cases”) for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”).

2. On May 29, 2009, the Bankruptcy Cases were consolidated for procedural purposes and were subsequently jointly administered. *See* Doc. No. 65.

3. Upon information and belief, Oldco M. Corporation was the direct or indirect parent of each of the Debtors and their subsidiaries.

4. As of February 23, 2010, the Debtors were dissolved and the Oldco M Distribution Trust was created in order to liquidate the Debtors’ remaining assets, litigate and resolve claims filed against the Debtors’ estates, make distributions to creditors, and take other actions permitted by the Second Amended Joint Plan of Liquidation of Debtors and Debtors in Possession (“Plan”).

5. On July 7, 2009, this Court established August 14, 2009 as the general bar date applicable for filing of proofs of claim in the Bankruptcy Cases.

6. DSSI timely filed various proofs of claim in the Debtors’ bankruptcy cases on August 13, 2009, asserting prepetition claims against different Debtors.

7. On October 4, 2011, Oldco M Distribution Trust filed the Objection, seeking to, *inter alia*, disallow certain proofs of claim filed by DSSI.

### **Jurisdiction**

8. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §1408 and 1409.

### **Relief Requested**

9. Oldco Trust has erroneously classified one of DSSI's claims ("Claim No. 2984") as a "No Liability Claim". DSSI therefore respectfully asks this Court to direct Oldco Trust to amend Exhibit 2 of its Objection to deny the Objection with respect to the administrative portion of Claim No. 2984 as a "No Liability Claim," and to recognize \$25,538.69 as an allowed administrative claim.

10. More particularly, in the Objection Debtors assert that claims identified on Exhibit 2 should be disallowed "because they are not valid liabilities of the Debtors." Objection at ¶ 9. However, to the extent that the Objection seeks to disallow and expunge the administrative portion of Claim No. 2984 (*i.e.*, \$25,538.88), it should be overruled based upon the reasons set forth below.

11. In support of the assertion that DSSI's claims should be disallowed, Oldco Trust filed an affidavit by William MacDonald. In that Affidavit, Mr. MacDonald states that he attempted to contact each claimant, including DSSI, relating to Oldco Trust's classification of "No Liability Claims."

12. Although DSSI was not listed as having sent a response to Mr. MacDonald, DSSI did, in fact, send a response relating to Mr. MacDonald's inquiry regarding DSSI's proofs of claims. DSSI's response to Mr. MacDonald is attached hereto as Exhibit A.

13. Mr. MacDonald thereafter requested that DSSI provide payment status information about the unsecured non-priority portion of DSSI's proofs of claim. In its response,

to Mr. MacDonald, DSSI acknowledged that the *unsecured non-priority portion* of Claim No. 2984 was paid in full, with the clear implication that the administrative portion of Claim No. 2984 remained due and payable. Moreover, DSSI has never been paid, much less advised that it has received payment, with respect to the administrative portion of Claim No. 2984.

14. As Oldco Trust correctly states in the Objection, Rule 3001(f) of the Federal Rules of Bankruptcy Procedure provides that “[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.” Fed. R. Bankr. P. 3001(f).

15. As the objecting party, Oldco Trust therefore has the burden of overcoming that *prima facie* presumption. See *Carey v. Ernst*, 333 B.R. 666, 672 (S.D.N.Y. 2005) (“To overcome this *prima facie* evidence, the objecting party must come forth with evidence which, if believed, would refute at least one of the allegations essential to the claim.”) (quoting *In re Reilly*, 245 B.R. 768, 773 (B.A.P. 2nd Cir. 2000)).

16. Rather than meeting its burden of proof, Oldco Trust simply states that “[t]he Trust has reviewed the No Liability Claims filed by the Claimants...and has determined that the No Liability Claims are not valid liabilities of the Debtors or their estates.” Objection at ¶ 21. Further, Oldco Trust supports this statement with the MacDonald Affidavit, which incorrectly states that DSSI failed to respond to inquiries regarding its proofs of claim.

17. Accordingly, the Objection should be overruled, as the Oldco Trust has failed to meet its burden of putting forth evidence to refute the validity of the administrative portion of Claim No. 2984.

18. Furthermore, and consistent with the foregoing, in a November 8, 2011 telephone conference between Ivana Shallcross, Esq. on behalf of DSSI and Kimberly Lawson, counsel for

Oldco Trust, Ms. Lawson agreed to amend Exhibit 2 of the Objection to reinstate DSSI's Claim No. 2984 in the amount of \$25,538.69.

**Conclusion**

19. With respect to Claim No. 2984, DSSI respectfully requests that the Court allow Claim No. 2984 as an administrative claim in the amount of \$25,538.69, and that it deny the Objection to the extent that it seeks to disallow same.

20. Consistent with the foregoing, DSSI also requests that this Court direct Oldco Trust to amend Exhibit 2 of its Objection to exclude the administrative portion of Claim No. 2984 as a "No Liability Claim," and to recognize \$25,538.69 as an allowed administrative claim.

21. DSSI reserves the right to amend or supplement this Response and to amend Claim No. 2984.

Dated: November 21, 2011  
Roseland, NJ

/s/ Richard M. Meth  
Richard M. Meth (R.M.7791)  
**FOX ROTHSCHILD LLP**  
75 Eisenhower Parkway, Suite 201  
Roseland, NJ 07068  
(973) 994-7515 (T) - (973) 992-9125 (F)  
- and -  
100 Park Avenue, 15<sup>th</sup> Floor  
New York, NY 10017  
rmeth@foxrothschild.com

- and -

/s/ C.R. Bowles  
C. R. Bowles (admitted *pro hac vice*)  
**GREENEBAUM DOLL & MCDONALD PLLC**  
3500 National City Tower  
101 South Fifth Street  
Louisville, KY 40202  
(502) 589-4200 (T) - (502) 587-3695 (F)  
crb@gdm.com

ATTORNEYS FOR DSSI, LLC