**Objection Deadline: May 28, 2013 at 4:00 p.m. (ET)**
**Hearing Date: June 4, 2013 at 10:00 a.m. (ET)**

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

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

**EIGHTH MOTION OF THE OLDCO M DISTRIBUTION TRUST FOR AN ORDER EXTENDING DEADLINE FOR TRUSTEE TO OBJECT TO CLAIMS**

TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:

The Oldco M Distribution Trust (the "Trust") respectfully represents as follows:

## I. Background

1. On May 27, 2009 (the "Petition Date"), Oldco M Corporation (f/k/a Metaldyne Corporation) and 30 of its domestic direct and indirect subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). By an order entered on May 29, 2009, the Debtors' chapter 11 cases were consolidated for procedural purposes and thereafter were jointly administered (Docket No. 65).

2. Shortly after the Petition Date, the Debtors filed motions (Docket Nos. 214 and 323) to sell a majority of their assets and to establish an auction process or processes and bid procedures to consummate these sales, and also began the process of marketing their other business units for sale. On August 5, 2009 and August 6, 2009, the Debtors held an auction, pursuant to which MD Investors Corporation ("MD Investors") presented a bid for the assets, which included a cash component, a credit bid component and other consideration. On August 12, 2009, the Court entered an Order (Docket No. 674) (the "Sale Order") authorizing the sale to MD Investors of substantially all of the Debtors' assets free and clear of all liens, claims, interests and encumbrances (the "MD Investors Transaction"). The MD Investors Transaction closed on October 16, 2009.

3. On June 5, 2009, the Court entered the Administrative Order, Pursuant to Rule 1015(c) of the Federal Rules of Bankruptcy Procedure, Establishing Case Management and Scheduling Procedures (Docket No. 133) (the "Case Management Order"). Pursuant to Paragraph 14 of the Case Management Order,

> [i]f a Motion to extend the time for the Debtors to take any action is filed before the expiration of the period prescribed by the . . . provisions of any order entered by this Court, the time shall automatically be extended until the Court acts on the Motion, without the necessity for the entry of a bridge order, provided that

> the Court has the authority to extend the time for the Debtors to take such action.

See Case Management Order at ¶ 14, p. 11.

4. On January 11, 2010, the Debtors filed their Second Amended Joint Plan of Liquidation of Debtors and Debtors in Possession (Docket No. 1180) (the "Plan") and the related Disclosure Statement. On February 23, 2010, the Court entered an Order confirming the Plan and substantively consolidating these bankruptcy cases (Docket No. 1384) (the "Confirmation Order"), and on March 30, 2010, the Plan became effective (the "Effective Date"). As of the Effective Date, the Debtors were dissolved and the Oldco M Distribution Trust was created in order to liquidate the Debtors' remaining assets (including any claims and causes of action possessed by the Debtors), litigate and resolve claims filed against the Debtors' estates, make distributions to creditors and take other actions permitted by Section III.C of the Plan.

5. The Plan provided that the Trustee (as defined below) could object to claims filed against the Debtors' bankruptcy estate until a certain Claims Objection Bar Date.[1] Specifically, the Plan provided that "[t]he . . . Trustee may object to any Claims[2] it believes warrant the Filing of an objection prior to the Claims Objection Bar Date." See Plan at § VI.B(5), p. 32. The Plan further provided that "[u]pon motion to the Bankruptcy Court, the . . . Trustee may request, and the Bankruptcy Court may grant, an extension to the Claims Objection Bar Date generally or with respect to a specific list of Claims. Any extension granted by the Bankruptcy Court shall not

[1] "Claims Objection Bar Date" was defined in the Plan to mean "the latest of: (a) 270 days after the Effective Date; (b) 75 days after the Filing of a proof of Claim for such Claim; and (c) such other period of limitation as may be specifically fixed by the Plan, the Confirmation Order, the Bankruptcy Rules or a Final Order for objecting to such Claim." See Plan at § I.A(22), p. 3. 270 days after the Effective Date was December 25, 2010, which was an official Court holiday. In addition, the Court was officially closed on December 27, 2010 due to inclement weather. Accordingly, the Claims Objection Bar Date is December 28, 2010.

[2] Capitalized terms used with respect to Plan provisions but not defined shall have the meaning ascribed to them in the Plan.

be considered to be a Plan modification under section 1127 of the Bankruptcy Code." See Plan at § VI.B(5), p. 32.

6. Since the Effective Date, Executive Sounding Board Associates, Inc., the trustee of the Trust (the "Trustee"), has been fulfilling its duties under the Plan, including the liquidation of the remaining assets. Specifically, the Trustee has been:

- Closing on and completing the sale of the Debtors' Farmington Hills property for $1,250,000 and the Debtors' New Castle property for $1,250,000.
- Making multiple visits to the Debtors' headquarters.
- Making provisions at a local Michigan offsite storage facility for record retention.
- Closing fifty-two of the Debtors' bank accounts at JP Morgan Chase.
- Preparing for and filing for bankruptcy (assignment) of the Metaldyne entity in Canada, which filed on October 22, 2010. The Trust filed a proof of claim in the amount of $9.6 million, related to accrued management and royalty fees less amounts owed to the Canadian entity in other intercompany transactions. The Trustee is serving as an inspector to the Canadian proceedings. Valuations were performed by RBC Dexia and Price Waterhouse Coopers ("PWC") of the underfunded pension liability and unremitted employer service cost contributions. Because of the large variance in the valuations, the Canadian Trustee engaged a third party to review the valuations to determine the proper amount of the claim. The Trust has also been cooperating with the Canadian Revenue Authority's restricted audit related to the management and administrative fees, royalty and specific reimbursements made to non-residents who do not deal at arms' length with the corporation. As attempts to sell the Thamesville facility in Canada were

unsuccessful, the Canadian trustee hired a real estate firm to auction the property. The property was sold at auction and the sale netted enough to cover the disposition and other out of pocket costs including, but not limited to, back real estate taxes and administrative costs. On May 17, 2012, the Trust received an initial distribution of $US 741,534.33. The property sale paves the way to enable to the Canadian case to be closed. The projected timeline for closing the Canadian case is June 30, 2013. There is approximately $145,000 remaining to be distributed of which approximately 61% or $88,000 will be distributed to the Trust estate.

- Reviewing and filing objections to priority, secured and unsecured claims.
- Reviewed and resolved administrative expense claims of the various estate professionals.
- Through efforts to negotiate with creditors and claim objections, the Trust has been able to reduce the claim pool by an excess of $25 million. In addition, the Trust is in negotiations with creditors to further reduce the claim pool by an additional multimillion dollar figure. The Trust believes that there are less than 100 disputed claims.
- Reconciled and resolved account differences with Ford during the transition processing agreement.
- Sending correspondence to various claimants seeking additional information on their claims in order to streamline the claim objection process and working with claimants to attempt to resolve the Trust's objections to claims.

- Sending more than 500 preference demand letters with respect to transfers made in the ninety days prior to the Petition Date. Filing avoidance actions with respect to transfers made in the 90 days prior to the Petition Date in cases where the Trust was unable to resolve the dispute through the demand letter process. Negotiating and settling several preference demands and avoidance actions, including collecting over $6,800,000 in gross preference recoveries before reduction for fees earned (which is currently held in the Trust's counsels' IOLTA accounts).
- Hired RSM McGladrey to bring the preparation of Corporate federal and state tax returns current including multiple state and international filings.
- Timely filed federal and state tax returns for the Estate.
- Settled a claim against the City of Litchfield for $175,000.
- Negotiate a large settlement with Russian supplier Gaz and obtained $479,306.19 in proceeds from the settlement.
- Negotiated a settlement of tax claims with the City of New Castle and Henry County in Indiana relating to the New Castle property, which resulted in an approximate reduction of $300,000.
- Negotiated property tax refunds (over assessments returned to the estate) in excess of $60,000.
- Made distributions to holders of approved secured, administrative and priority claims for over $750,000. Also made two distributions to holders of allowed unsecured claims of approximately $5.4 million.
- Negotiated a settlement with the Internal Revenue Service in excess of $1 million.

- Negotiated and worked to finalize outstanding tax returns and claims with the State of Michigan, resulting in a refund of over $600,000 to the Estate.
- Successfully mediated the administrative expense of Ferguson Service Supply.
- Winding down the foreign subsidiaries per the Plan.
- Filing a motion to disallow and estimate over $11.5 million in claims filed by ACE American Insurance Company, Illinois Union Insurance Company, Indemnity Insurance Company of North America, Pacific Employers Insurance Company, Esis, Inc., and Westchester Fire Insurance Company (the "ACE Claimants") and a complaint for turnover of estate property against the ACE Claimants. The Trust has reached a settlement in principal that resolves the motion and the complaint against the ACE Claimants. The parties are currently documenting that settlement and anticipate filing a motion to approve the settlement in the next few weeks.
- The Trust has spent significant time responding to a subpoena issued by Asahi Tec, a former parent of one of the Debtors, including, commencing a miscellaneous proceeding in the District Court for the Southern District of New York against Asahi Tec after not being able to resolve the Trust's disputes regarding the subpoena.
- The Trust has also spent significant time winding down the former Metaldyne Hourly and Salary Retirement Plans, including interacting with the investment advisors and administrator, Fidelity investments, the individual plan participants as well as responding to multiple IRS inquiries.

Although this is not an exhaustive list, it highlights some of the significant duties that the Trustee has been fulfilling since the Effective Date.

7. On December 28, 2010, the Trustee filed the Motion of the Oldco M Distribution Trust for an Order Extending the Deadline for Trustee to Object to Claims (Docket No. 1689). On April 26, 2011, the Court entered the Order Granting Motion to Extend Time to Object to Claims extending the deadline for the Trustee to object to claims to June 27, 2011 (Docket No. 1724).

8. On June 27, 2011, the Trustee filed the Second Motion of the Oldco M Distribution Trust for an Order Extending the Deadline for Trustee to Object to Claims (Docket No. 2075). On October 20, 2011, the Court entered the Order Granting Second Motion of the Oldco M Distribution Trust for an Order Extending the Deadline for Trustee to Object to Claims extending the deadline for the Trustee to object to claims to December 27, 2011 (Docket No. 2126).

9. On December 27, 2011, the Trustee filed the Third Motion of the Oldco M Distribution Trust for an Order Extending the Deadline for Trustee to Object to Claims (Docket No. 2161) (the "Third Motion"). At the omnibus hearing on January 19, 2012, the Court orally granted the Third Motion, extending the deadline for the Trustee to object to claims to April 27, 2012.

10. On April 26, 2012, the Trustee filed the Fourth Motion of the Oldco M Distribution Trust for an Order Extending the Deadline for Trustee to Object to Claims (Docket No. 2235) (the "Fourth Motion"). On May 30, 2012, the Court advised the Trustee's counsel that an Order would be entered granting the Fourth Motion extending the deadline for the Trustee to object to claims to July 27, 2012.

11. On July 27, 2012, the Trustee filed the Fifth Motion of the Oldco M Distribution Trust for an Order Extending the Deadline for Trustee to Object to Claims (Docket No. 2260) (the "Fifth Motion"). At the omnibus hearing on August 23, 2012, the Court orally granted the Fifth Motion, extending the deadline for the Trustee to object to claims to October 29, 2012.

12. On November 2, 2012, the Trustee filed the Sixth Motion of the Oldco M Distribution Trust for an Order Extending the Deadline for Trustee to Object to claims (Docket No. 2283) (the "Sixth Motion"). On November 28, 2012, the Court entered the Order Granting Sixth Motion of the Oldco M Distribution Trust for an Order Extending Deadline for Trustee to Object to Claims (Docket No. 2288), extending the deadline for the Trustee to object to claims to January 29, 2013.

13. On January 29, 2013, the Trustee filed the Seventh Motion of the Oldco M Distribution Trust for an Order Extending the Deadline for Trustee to Object to claims (Docket No. 2297) (the "Seventh Motion"). On February 19, 2013, the Court entered the Order Granting Seventh Motion of the Oldco M Distribution Trust for an Order Extending Deadline for Trustee to Object to Claims (Docket No. 2306), extending the deadline for the Trustee to object to claims to April 29, 2013.

## II. Relief Requested

14. Pursuant to Section VI.B(5) of the Plan, the Trustee respectfully requests another three month extension of its time to object to claims against the estate.

## III. Basis for the Relief Requested

15. Section 1141(a) of the Bankruptcy Code provides that the provisions of a confirmed plan bind all creditors and equity security holders under the plan "whether or not such creditor, equity security holder, or general partner has accepted the plan." 11 U.S.C. § 1141(a). In the instant case, the confirmed Plan expressly provides the Court with the discretion to extend

the deadline to object to claims against the estate.

16. The Trustee has been working diligently since its appointment. The Trustee has been working towards resolving claims. In addition, the Trustee has diligently been requesting additional information from claimants to be thorough and complete if an objection is necessary. Since the last extension, the Trustee has been able to obtain information from various claimants and resolve claim disputes, including the settlement in principal of the claims filed by the ACE Claimant, which exceed $11 million. However, the Trustee has not been able to resolve all claim disputes. Accordingly, the Trustee respectfully requests an additional three (3) month extension of the time to object to such claims pursuant to the provisions of Section VI.B(5) of the Plan.

## IV. Notice

17. Notice of this Motion has been served in accordance with the procedures set forth in the Case Management Order on the parties identified on the Special Service List and the General Service List (as such terms are defined in the Case Management Order). The Trust submits that no other or further notice need be provided.

WHEREFORE, based on the foregoing, the Trustee respectfully requests that the Court enter an order extending the deadline for the Trustee to object to claims against the bankruptcy estate three (3) months and granting such other and further relief as is just and proper.

Dated: April 29, 2013
New York, New York

Respectfully submitted,

/s/ Mark D. Silverschotz

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