Objection Deadline: December 14, 2017 at 4:00 p.m. (ET)
Hearing Date: December 21, 2017 at 2:00 p.m. (ET)

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Counsel to the Oldco M Distribution Trust

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)

NOTICE OF MOTIONS OF THE OLDCO M DISTRIBUTION TRUST FOR AN ORDER 1) AUTHORIZING AND APPROVING STIPULATION AND SETTLEMENT BY AND BETWEEN OLDCO M DISTRIBUTION TRUST AND MD INVESTORS CORPORATION REGARDING ALLOCATION OF PROCEEDS OF SALE OF CERTAIN SHARES OF THE MANUFACTURERS LIFE INSURANCE COMPANY (A/K/A MANULIFE); AND, 2) EXTENDING TERM OF DISTRIBUTION TRUST THROUGH FEBRUARY 28, 2018 TO ALLOW FOR CLOSING OF ESTATE AND DISTRIUTION OF FUNDS

PLEASE TAKE NOTICE that the Oldco M Distribution Trust (the "Trust") will move before the Honorable Martin Glenn, United States Bankruptcy Judge, at the United States Bankruptcy Court, the Alexander Hamilton Customs House, One Bowling Green, New York, New York 10004-1408, **on December 21, 2017 at 2:00 p.m. (ET)**, for entry of orders 1) authorizing and approving the annexed Stipulation By and Between Oldco Distribution Trust and MD Investors Corporation ("MDI") respecting the distribution of the proceeds of certain shares of The Manufacturers Life Insurance Company (a/k/a "Manulife") (the "Settlement Motion"); and, 2) extending the term of the Distribution Trust through February 28, 2018 to allow for the closing of the case and final distribution of funds.

PLEASE TAKE FURTHER NOTICE that written objection, if any, to the relief requested by the Trust shall conform to the Federal Rules of Bankruptcy Procedure, the Local Rules of the Bankruptcy Court for the Southern District of New York and the Administrative Order, Pursuant to Rule 1015(c) of the Federal Rules of Bankruptcy Procedure, Establishing Case Management and Scheduling Procedures entered on June 5, 2009 (the "Case Management Order")[Docket No. 133], shall set forth the name of the objecting party, the basis for the objections and the specific grounds thereof, shall be filed with the Clerk of the United States Bankruptcy Court, One Bowling Green, New York, New York 10004-1408 by no later than **December 14, 2017 at 4:00 p.m. (ET)** (with two hard copies delivered directly to Chambers), and must be served upon counsel for the Trust, Anderson Kill P.C., 1251 Avenue of the Americas, New York, New York 10020, Attn: Mark D. Silverschotz, Esquire., and Reed Smith LLP, 599 Lexington Avenue, New York, New York 10022, Attn: Kurt Gwynne, Esquire and 1201 N. Market Street, Suite 1500, Wilmington, DE 197801, Attn: Kurt Gwynne, Esquire, and

upon counsel to MDI, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York, 10022, Attn: Christopher J. Marcus, Esquire.

PLEASE TAKE FURTHER NOTICE that if an objection to the Motion is not received by the Objection Deadline, the relief requested in the Motion shall be deemed unopposed, and the Bankruptcy Court may enter an order granting the relief sought without a hearing.

PLEASE TAKE FURTHER NOTICE that objecting parties are required to attend the hearing and failure to appear may result in relief being granted or denied upon default.

PLEASE TAKE FURTHER NOTICE that copies of the Case Management Order, the Special Service List and the General Service List may be obtained from the Court's website at http://ecf.nysb.uscourts.gov or, free of charge, at www.bmcgroup.com/metaldyne.

Dated: November 29, 2017
New York, New York

Respectfully submitted,

/s/ Mark D. Silverschotz

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

MOTION OF THE OLDCO M DISTRIBUTION TRUST FOR AN ORDER (1) AUTHORIZING AND APPROVING STIPULATION AND SETTLEMENT BY AND BETWEEN OLDCO M DISTRIBUTION TRUST AND MD INVESTORS CORPORATION REGARDING ALLOCATION OF PROCEEDS OF SALE OF CERTAIN SHARES OF THE MANUFACTURERS LIFE INSURANCE COMPANY (A/K/A MANULIFE); AND, (2) EXTENDING TERM OF DISTRIBUTION TRUST THROUGH FEBRUARY 28, 2018 TO ALLOW FOR CLOSNG OF ESTATE AND DISTRIBUTION OF FUNDS

TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:

The Oldco M Distribution Trust (the "Trust") moves the Court for an Order (i) authorizing and approving a stipulation and settlement by and between the Trust and MD Investors Corporation ("MDI") regarding the allocation of proceeds of certain stock and (ii) extending the term of the Trust through February 28, 2018. In support of the motion, the Trust respectfully represents as follows:

I. Background

A. General 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. On August 7, 2009, the Debtors entered into a certain purchase agreement (the "Purchase Agreement") whereby MDI agreed to purchase substantially all of the Debtors' assets related to the Debtors' powertrain business group, chassis business group, balance shaft modules business group and tubular business group.

3. By Order dated August 12, 2009, the Court approved the Purchase Agreement and sale to MDI.

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").

5. 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.

6. Pursuant to the Plan, Executive Sounding Board Associates, Inc. (the "ESBA") was appointed as the trustee of the Trust on March 30, 2010. ESBA was succeeded as trustee by Executive Sounding Board Associates, LLC, which was succeeded as trustee by EisnerAmper LLP (the "Trustee").

7. Pursuant to Article VI.B.1 of the Plan and Article 7.2 of the Distribution Trust Agreement (Exhibit I.A.42 to the Plan), the Trustee has the authority to settle and compromise objections to claims. Pursuant to Article 4.10.2 of the Distribution Trust Agreement, the Trustee can submit a motion to this Court for approval of the Stipulation and Agreed Order annexed hereto. Pursuant to Article IX of the Plan, this Court retained jurisdiction to approve this Motion.

8. The Trustee has spent the better part of the past seven years liquidating the estates, settling claims, and undertaking the various duties incumbent upon the Trustee in accordance with the terms of the Distribution Trust Agreement.

9. By virtue of orders of the Bankruptcy Court, most recently entered on September 25, 2017 [Docket No.2517], the original date for the Trust's termination has been extended to December 31, 2017.

B. <u>The Manulife Shares</u>

10. During the latter half of 2016, the Trustee determined that the Trust was the successor in interest to certain shares (the "Shares") of The Manufacturers Life Insurance Company (a/k/a Manulife) ("Manulife") when some of the dividend checks relating to the Shares were forwarded to the Trustee. Thereafter, the Trustee engaged in protracted efforts to secure not only the additional dividend checks, but also the actual Shares from Computershare, Inc., which was the Shares' custodian.

11. The process of securing the Shares, as mentioned, was arduous, requiring the establishment of the Trust's rights thereto, proof of chain of title, and even the provision of a formal "medallion" signature for the representatives of the Trustee. Eventually, the shares were delivered to, and liquidated by the Trustee. Net of costs, including a contingency fee to the party that located the dividend checks and brought them to the Trustee's attention, the Trust has recovered approximately $800,000 on account of the Shares.

C. <u>Entitlement to Proceeds of the Shares</u>

12. In order to make a final distribution of the remaining Trust assets, the Trustee needed to determine who was entitled to the proceeds of the Shares. Under the terms of the Debtors' Plan of Reorganization, there are two distinct distribution categories. One hundred percent of the proceeds of "Recovery Actions", net of costs, are distributed to general unsecured creditors, whereas the proceeds of other assets in the estate are split on a 50/50 basis between those creditors and MDI, the entity which purchased substantially all of the assets of the Debtors during the administrative period of the Chapter 11 case.

13. Pursuant to the Trust Agreement, the term "Recovery Actions" includes "all claims and causes of action held by the Debtors' Estates of any nature, including, without limitation, claims and causes of action under sections 502(d), 544, 545, 547, 548, 549, 550, and 552 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law, and the proceeds thereof, whether received by judgment, settlement or otherwise". Distribution Trust Agreement at page 7.

14. Pursuant to section 5.4.6 of the Trust Agreement, subject to the reductions for associated costs, "the Distribution Trustee shall distribute to the MD Investors from the Other Asset Trust Account an amount equal to the 50% of the Distributable Net Other Asset Cash held in the Other Asset Trust Account on such Distribution Date." Essentially, as described above, this means that MDI is entitled to 50% of the net recovery of anything that is not a "Recovery Action."

15. In order to determine into which "bucket" the proceeds of the Shares should be placed, and from which they subsequently should be distributed, it was necessary to review the Plan, the MDI/Metaldyne asset purchase agreement, and consider the relative merits of arguments for placing the Shares' proceeds into either bucket.

16. In connection with such process, the Trustee has negotiated with the representatives of MDI. Needless to say, the Trustee took the position that general unsecured creditors were entitled to 100% of the Shares' proceeds, and MDI contended it was entitled to half.

17. After good faith, arms-length negotiations, MDI and the Trust have agreed that MDI will accept Two Hundred and Fifty Thousand Dollars ($250,000.00) of the net proceeds of the Shares in full and complete satisfaction of any of MDI's claim, right, or interest therein (the

"Settlement"). The balance, net of costs, will be distributed by the Trust as part and parcel of its final distribution to creditors prior to the termination of the Trust. In addition, the Trust's "oversight committee" has approved the Settlement.

18. The Trustee shall be moving to close the Metaldyne/Oldco Chapter 11 cases contemporaneously with shortly after the filing of this Motion. However, as a consequence of the holiday season and other factors, final distributions to creditors likely will not be made until the month of January, 2018. Accordingly, out of an abundance of caution, the Distribution Trustee seeks an extension of the Distribution Trust's formal existence until February 28, 2018.

II. Basis for the Relief Requested

A. Approval of Stipulation

19. This Court has jurisdiction to approve the accompanying Stipulation and Agreed Order embodying the Settlement as is involves resolution of claims against the estate.

20. In order to establish post-confirmation jurisdiction: (i) "the matter must have a close nexus to the bankruptcy plan or proceeding, as when a matter affects the interpretation, implementation, consummation, execution or administration of the confirmed plan or incorporated litigation trust agreement"; and (ii) "the plan must provide for the retention of jurisdiction over the dispute." In re Park Avenue Radiologists, P.C., 450 B.R. 461, 468 (Bankr. S.D.N.Y. 2011) (J. Glenn) (quoting In re General Media, 335 B.R. 66, 73-74 (Bankr. S.D.N.Y. 2005) (J. Bernstein)).

21. A "close nexus" to the plan requires that the proceeding "affect some aspect of the plan - its meaning, its implementation or its consummation." Id. (quoting In re General Media, 335 B.R. at 74). The "close nexus" standard has been met when the issue before the bankruptcy court will "affect the distribution of assets among creditors in the bankruptcy proceeding." In re Allstate Insurance Co. v. ACE Securities Corp., 2011 WL 3628852, at *5 (S.D.N.Y. Aug. 17,

2011) (J. Sand). This is true even if the matter before the court may result in a small payout "because these payouts will be commensurate with the payouts of other contingent claimants, and thus affect those claimants' rights to the implementation of the confirmed plan." Id. When a plan provides for the liquidation rather than the reorganization of the debtor, post-confirmation jurisdiction is more expansive because "[i]n a liquidation plan, 'the reorganized debtor's sole purpose is to wind up its affairs, convert its assets to cash, and pay creditors a pro rata dividend.'" Kirschner v. Grant Thorton LLP (In re Refco, Inc. Sec. Lit.), 628 F. Supp. 2d 432, 442 (S.D.N.Y. 2008) (J. Lynch) (quoting In re Boston Reg'l Med. Ctr., Inc., 410 F.3d 100, 107 (1st Cir. 2005)); see In re Cross Media Marketing Corp., 367 B.R. 435, 444 (Bankr. S.D.N.Y. 2007) (J. Glenn) ("The Plaintiff's confirmed chapter 11 plan is a liquidation plan. Therefore, the Court retains jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334(b)."). "[W]here a debtor's plan is a liquidating plan, and the reorganized debtor's sole purpose is to wind up its affairs, convert its assets to cash, and pay creditors a pro rata dividend, the bankruptcy court's post-confirmation jurisdiction is more broad because its jurisdiction relates directly to core functions of the bankruptcy court and its exercise of jurisdiction does not require the bankruptcy court to supervise a newly reorganized business." In re DPH Holdings Corp., 437 B.R. 88, 98 (S.D.N.Y. 2010) (J. Marrero) (internal quotations omitted).

22. "A bankruptcy court retains post-confirmation jurisdiction in a chapter 11 proceeding only to the extent provided in the plan of reorganization. The bankruptcy court's post-confirmation jurisdiction therefore is defined by reference to the Plan." In re Johns-Manville, 7 F.3d 32, 34 (2d Cir. 1993) (citations omitted); see also In re Neptune 111 B.R. 457, 462 (Bankr. S.D.N.Y. 1990) (J. Schwartzberg) ("[A] Chapter 11 plan and order confirming the plan may specifically provide for retention of jurisdiction by the bankruptcy court over actions

pending at the time of confirmation and actions commenced after the time of confirmation, and over any assets recovered as a result of these actions.”).

23. Pursuant to Article VI.B.1 of the Plan and Article 7.2 of the Distribution Trust Agreement (Exhibit I.A.42 to the Plan), the Trustee has the authority to settle and compromise objections to claims. Pursuant to Article 4.10.2 of the Distribution Trust Agreement, the Trustee can submit a motion to this Court for approval of the Stipulation and the Settlement Agreement. Pursuant to Article IX subsections 1 and 14, among others, of the Plan, this Court retained jurisdiction to approve this Motion. Therefore, the liquidating Plan unequivocally retains post-confirmation jurisdiction to resolve this matter.

B. Approval Pursuant to Bankruptcy Rule 9019(a)

24. The Trustee also seeks entry of an order approving the Stipulation and the Agreed Order pursuant to Federal Rule of Bankruptcy Procedure 9019(a).[1]

25. Bankruptcy Rule 9019(a) provides, in pertinent part, as follows: "[o]n motion by the trustee and after a notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). The decision to approve a settlement agreement is within the sound discretion of the Bankruptcy Court. In re Drexel Burnham Lambert Group, Inc., 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991). In determining whether a settlement agreement should be approved, pursuant to Fed. R. Bankr. P. 9019(a), a court must find that the proposed settlement is fair and equitable, reasonable, and in the best interest of the debtor's estate. In re: Ionosphere Cubs, Inc., 156 B.R. 414, 426 (S.D.N.Y. 1993), *aff'd*, 17 F.3d 600 (2d Cir. 1994).

[1] The Trust does not believe that Bankruptcy Rule 9019(a) applies to the relief sought in this Motion. Out of an abundance of caution, the Trust seeks approval of this Motion under Rule 9019(a).

26. Courts consider the following factors in determining whether a settlement agreement should be approved: (a) the probability of success in the litigation; (b) the difficulty associated with collecting on any judgment obtained through litigation; (c) the complexity of the litigation involved, including the expense, inconvenience and delay necessarily attending it; (d) the interest of creditors; and (e) whether the settlement was reached after arms-length negotiations. Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968).

27. Here, it is without question that the Stipulation and Agreed Order is in the best interest of the beneficiaries of the Trust. By way of the Settlement, MDI is accepting $250,000 on account of a hypothetical claim for about $400,000. The Trust will benefit by at least $150,000 and avoid the costs and risks associated with litigation.

28. Further, to avoid further delay, the parties have agreed that, in the absence of any third-party objection, they may waive the finality provisions of the Stipulation and Agreed Order.

29. In lieu of protracted and expensive litigation and without any risk of collection, the Settlement memorialized in the Stipulation and Agreed Order provides a direct and immediate benefit to the beneficiaries of the Trust.

30. In light of the foregoing, the Trustee submits that the Stipulation and Agreed Order is in the best interest of all parties involved and the beneficiaries of the Trust. In addition, the Trustee submits that this Court has retained post-confirmation jurisdiction pursuant to the Plan to approve this Motion and the Stipulation and Agreed Order. Therefore, the Trustee respectfully requests this Court approve the Stipulation and Agreed Order.

C. Further Extension of Trust Termination Date

31. The efforts of the Trustee to date have been described to the Court on multiple occasions, most recently in the Fourth Motion of Oldco M Distribution Trust For Order Further Extending Termination Date [Docket 2514], which resulted in the entry of the Order [Docket No. 2517] extending the Trust's termination date to December 31, 2017. To avoid needlessly burdening the record, the comprehensive description of the Trustee efforts will not be repeated here. That said, the Trustee respectfully requests a further extension through February 28, 2018 in order to finalize the final distribution to creditors. It is expected that upon such distribution, and the entry into a contract with a storage facility to hold the Trust's records, as required by the Distribution Trust Agreement, the Distribution Trust will cease to have any further function.

III. Notice

32. Notice of this Motion has been served in accordance with the procedures set forth in the Case Management Order on: (a) the parties identified on the Special Service List and the General Service List (as such terms are defined in the Case Management Order); (b) Counsel for for MDI, Christopher Marcus, P.C., Kirkland and Ellis LLP, 601 Lexington Avenue, New York, NY 10022; Facsimile: 212-446-4800, and the Office of the United States Trustee. The Trust respectfully 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: (i) granting the Motion; (ii) approving the Stipulation Agreed Order and authorizing the Stipulation Parties and Settlement Parties to consummate the Settlement, as applicable; (iii) further extending the termination date of the Distribution Trust to February 28, 2018, and (iv) granting such other and further relief as is just and proper.

Dated: November 29, 2017
New York, New York

Respectfully submitted,
ANDERSON KILL P.C.

/s/ *Mark D. Silverschotz*

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