

Alan J. Lipkin  
Jeremy E. Crystal  
WILLKIE FARR & GALLAGHER LLP  
787 Seventh Avenue  
New York, New York 10019  
Tel: (212) 728-8000  
Fax: (212) 728-8111

Hearing Date: September 16, 2009  
Time: 10:00 a.m.

Counsel to DYNE (DE) LP

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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**OBJECTION OF DYNE (DE) LP TO MOTION OF DEBTORS AND DEBTORS IN POSSESSION, PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 6006, FOR AN ORDER AUTHORIZING THEM TO REJECT (A) CERTAIN UNEXPIRED NONRESIDENTIAL REAL PROPERTY “LEASES” WITH DYNE (DE) LP AND (B) CERTAIN RELATED SUBLEASES**

DYNE (DE) LP (“Landlord”), by and through its attorneys, hereby files this objection to the motion of the debtors and debtors in possession in the above-captioned cases (the “Debtors”) for an order authorizing them to reject (i) certain purported unexpired nonresidential real property “leases” with Dyne (DE) LP [Docket No. 630] (the “Motion”), and (ii) certain related subleases, and in support thereof respectfully represents as follows:

**BACKGROUND**

1. Landlord owns certain non-residential real property located in Rome, GA, Niles, IL, Plymouth, MI, Solon, OH, and Twinsburg, OH (collectively, the “Premises”). Pursuant to a

single lease, the Second Amended and Restated Lease Agreement, dated as of August 16, 2001 (as amended, the “Lease”), certain of the Debtors, Metaldyne Machining and Assembly Company, Inc., Metaldyne Lester Precision Die Casting, Inc. (f/k/a Lester Precision Die Casting, Inc.), and Metaldyne DuPaige Die Casting Corporation (f/k/a DuPaige Die Casting Corporation) (each a “Tenant,” and collectively, the “Tenants”), leased the Premises from Landlord.

### **OBJECTION**

#### **The Debtors May Not Reject A Portion Of Landlord’s Lease**

2. It is well-settled in this Circuit (as in others) that “under the law of bankruptcy a contract cannot be assumed in part or rejected in part.” AGV Prods., Inc. v. Metro-Goldwyn-Mayer, Inc., 115 F. Supp. 2d 378, 391 (S.D.N.Y. 2000) (citations omitted). Hence, the Bankruptcy Code does not permit the Debtors to “cherry-pick” those portions of the Lease that the Debtors find beneficial. Pieco, Inc. v. Atlanta Computer Sys., Inc. (In re Atlantic Computer Sys., Inc.), 173 B.R. 844, 849 (S.D.N.Y. 1994).

3. Landlord hereby incorporates by reference its Objection and Memorandum of Law, filed July 24, 2009, (the “Objection”) in opposition to the Debtors’ proposed assumption and assignment of a portion of the Lease [Docket No. 505], the Declaration of Benjamin Harris, filed July 28, 2009, in support of the Objection [Docket No. 538], the forthcoming Pretrial Memorandum of Law of Dyne (DE) LP In Opposition To Debtors’ Proposed Assumption and Assignment Of A Portion Of Dyne (DE) LP’s Unexpired Nonresidential Real Property Lease In Connection With The Powertrain Group Sale, to be filed pursuant to this Court’s Case Management Order #1, filed August 11, 2009 [Docket No. 663], as it may be amended, and any other documents to be filed regarding the hearing to be held before this Court in connection with Docket No. 505, which demonstrate that the Lease is indivisible and, therefore, that partial rejection of the Lease is not permissible.

If Rejection Of All Or Any Portion Of The Lease Is Permitted,  
Then Tenants Must Have Vacated All Applicable Premises By The Rejection Date<sup>1</sup>

4. Section 365(d)(4) of the Bankruptcy Code provides, in pertinent part, that a debtor must “immediately surrender non residential real property [subject to an unexpired lease] to the lessor [upon rejection]. . . .” 11 U.S.C. §365(d)(4).

5. The Debtors’ proposed order annexed to the Motion includes the following paragraph:

The Debtors are authorized to reject the Dyne Leases between the Debtors and Dyne for the real property located in Rome, Georgia; Solon, Ohio; Niles, Illinois; and Plymouth, Michigan, and these Unexpired Leases are deemed rejected, pursuant to section 365 of the Bankruptcy Code, effective as of September 1, 2009 for the Rome, Georgia and Solon, Ohio Unexpired Leases. The effective date of rejection for the Niles, Illinois and Plymouth, Michigan Unexpired Leases shall be the earlier of (i) December 23, 2009 or (ii) the date that is identified in a notice of rejection filed by the Debtors with the Court, which shall be filed at least five days before the rejection effective date (each a “Rejection Effective Date”).”

6. If rejection of the entire Lease is authorized, then such rejection should not be effective until the latest of the requested rejection date, the date of entry of the rejection order, and the date the Debtors have vacated all of the Premises. Alternatively, in the unlikely event the Debtors are permitted to reject portions of the Lease, the Proposed Order should be amended to include the following language in place of the quoted language above:

The Debtors are authorized to reject the Dyne Leases between the Debtors and Dyne for the real property located in Rome, Georgia; Solon, Ohio; Niles, Illinois; and Plymouth, Michigan, and these Unexpired Leases are deemed rejected, pursuant to section 365 of the Bankruptcy Code, effective as of: (i) the later of September 1, 2009 and the date of entry of this order respecting Rome, GA and

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<sup>1</sup> Nothing in this Objection should be construed as an admission by Dyne (DE) LP as to the purported severability of the Lease.

Solon, OH; and (ii) the later of the date of entry of this order, the date that is identified in a notice of rejection filed by the Debtors with the Court, which shall be filed at least five days before the rejection effective date, and the date the Debtors vacate and surrender the subject premises for Niles, Illinois and Plymouth, Michigan.

**CONCLUSION**

WHEREFORE, Landlord respectfully requests that the Court: (a) deny the Debtors' request for an order authorizing them to reject portions of the Lease with Dyne (DE) LP; (b) condition the rejection of the Lease or portions thereof on the Debtors having vacated the Premises; and (c) grant Landlord such other and further relief as the Court deems just and proper.

Dated: August 20, 2009

Respectfully submitted,

WILLKIE FARR & GALLAGHER LLP

By: /s/ Alan J. Lipkin

Alan J. Lipkin  
787 Seventh Avenue  
New York, New York 10019-6099  
(212) 728-8000

Of Counsel: Jeremy E. Crystal

Attorneys for DYNE (DE) LP