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***Conflicts and Special Counsel for the  
Debtors and Debtors-in-Possession***

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	)	
In re:	)	
	)	Chapter 11
Metaldyne Corporation, <i>et al.</i> ,	)	Case No. 09-13412 (MG)
	)	Jointly Administered
Debtors.	)	
-----X		

**METALDYNE CORPORATION'S MOTION PURSUANT TO 11 U.S.C. 107(B)  
AND RULE 9018 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE,  
FOR AN ORDER AUTHORIZING IT TO FILE REDACTED DOCUMENTS**

Metaldyne Corporation and the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), move this Court for entry of an order, pursuant to section 107(b) of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code") and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the Debtors to file redacted wind down agreements with various customers related to the wind down of the Debtors' Middleville, Michigan and Niles, Michigan facilities (the "Motion"). In further support of its Motion, the Debtors state as follows:

**Background**

1. On May 27, 2009 (the "Petition Date"), Metaldyne Corporation and the other 30 Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code

(the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

2. The Debtors are in the process of winding down production at their Middleville, Michigan and Niles, Michigan facilities (the “Michigan Facilities”) and have entered into wind down agreements with certain of their customers (individually, a “Wind Down Agreement” and collectively, the “Wind Down Agreements”). Upon the execution of these Wind Down Agreements, the Debtors will file stipulations (the “Wind Down Stipulations”) with the Court seeking approval of these Wind Down Agreements, which the Debtors intend to file as exhibits to the Wind Down Stipulations. However, the Wind Down Agreements either include a confidentiality provision or the non-debtor party to such agreements have indicated that the agreements contain confidential, sensitive, and commercial information, including confidential information related to specific customers of the Debtors (the “Customers”) that cannot be disclosed in the public record.

### **Jurisdiction**

3. This Court has 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**

4. By this Motion, the Debtors seek the entry of an order, pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, authorizing the Debtors to file redacted versions of the Wind Down Agreements related to the wind down of the Michigan Facilities, as exhibits to the Wind Down Stipulations.

**Basis for Relief and Memorandum of Law in Support Thereof**

5. Pursuant to section 107(b) of the Bankruptcy Code, the Court may order that redacted versions of the Wind Down Agreements be filed. Section 107(b) provides, in relevant part:

On request of a party in interest, the bankruptcy court shall and on the bankruptcy court's own motion, the bankruptcy court may-

(1) Protect an entity with respect to a trade secret or confidential research, development, or commercial information ....

11 U.S.C. § 107(b).

6. Bankruptcy Rule 9018 also sets forth the procedure by which a party in interest may move for relief under section 107(b) of the Bankruptcy Code. Specifically, Bankruptcy Rule 9018 provides, in relevant part:

On motion or its own initiative, *with or without notice*, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information ....

Fed. R. Bankr. P. 9018 (emphasis added).

7. Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 are “designed to protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury.” *In re Global Crossing, Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003). According to this Court in *Global Crossing*:

When the requirements of Rule 9018 are satisfied, the authority to issue the resulting order is broad – any order which justice requires. The Court notes that the authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice.

*Id.* at 724 (internal citations omitted).

8. Once a court determines that a party in interest is seeking protection of information that falls within one of the categories enumerated in section 107(b), “the court is required to protect a requesting interested party and has no discretion to deny the application.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994). Additionally, commercial information need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *Id.* at 28.

9. In *Orion*, the Second Circuit affirmed the bankruptcy court’s order that a licensing agreement remain sealed because the release of any information in the agreement would adversely affect the debtor’s ability to negotiate favorable promotional agreements, thereby giving its competitors an unfair advantage. *Id.* In affirming the order of protection, the Second Circuit noted that section 107(b)(1) of the Bankruptcy Code creates an exception to the general rule that court records are open to examination by the public. *Id.* at 27 (citing *In re Orion Pictures Corp.*, 1993 U.S. Dist. LEXIS 111734, at \*2 (S.D.N.Y. August 25, 1993)). The Second Circuit further noted that, under this exception, an interested party has to show only that the information it wishes to seal is “confidential and commercial in nature.” *Id.* (internal quotation marks omitted).

10. Within the categories of information entitled to protection, courts in this district have recognized that information if disclosed, which would adversely affect existing or future business ventures, is entitled to be filed under seal. *In re Barney’s Inc.*, 201 B.R. 703, 708-09 (Bankr. S.D.N.Y. 1996) (stating that the Second Circuit’s decision in *In re Orion* mandates sealing information when disclosure thereof will have an adverse impact on the entity’s competitive endeavors).

11. In light of this authority, the issuance of a protective order allowing the Debtors to file redacted versions of the Wind Down Agreements is warranted here. The Wind Down Agreements contain precisely the sort of sensitive and confidential information that should be redacted, since disclosure of this information poses a substantial risk of adverse impact upon the Debtors' relationship with the Customers, whose cooperation is necessary to successfully wind down the Michigan Facilities in an orderly and timely fashion. In addition, the non-debtor parties have agreed to limit the redaction to just the information that will pose risk to them and thereby impede the benefits sought to be obtained by the Debtors pursuant to the Wind Down Agreements.

#### **Notice**

12. Bankruptcy Rule 9018 expressly provides that this Court may grant the requested relief "with or without notice." Fed. R. Bankr. P. 9018. However, the Debtors have provided notice of this Motion to those parties on the Special Service List as specified in the Court's Administrative Order, Pursuant to Rule 1015(c) of the Federal Rules of Bankruptcy Procedure, Establishing Case Management and Scheduling Procedures dated June 5, 2009.

#### **No Prior Request**

13. No prior request for the relief sought in this Motion has been made to this or any other court in connection with these chapter 11 cases.

WHEREFORE, the Debtors respectfully requests that the Court (a) enter an order substantially in the form annexed hereto as Exhibit A granting the relief requested herein; and (b) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: October 29, 2009

Respectfully submitted,  
**FOLEY & LARDNER LLP**

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***Conflicts and Special Counsel for the Debtors  
and Debtors-in-Possession***

**EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X	)	
	)	
In re:	)	
	)	Chapter 11
Metaldyne Corporation, <i>et al.</i> ,	)	Case No. 09-13412 (MG)
	)	Jointly Administered
Debtors.	)	
-----X		

**ORDER PURSUANT TO 11 U.S.C. § 107(B) AND FED. R. BANK. P. 9018**  
**AUTHORIZING THE DEBTORS TO FILE REDACTED DOCUMENTS**

This matter coming before the Court on the Motion of Metaldyne Corporation and the above-captioned debtors in possession (the “Debtors”) pursuant to 11 U.S.C. § 107(b) and Rule 9018 of the Federal Rules of Bankruptcy Procedure, for an Order Authorizing the Debtors to File Redacted Documents (the “Motion”)<sup>1</sup>; the Court having reviewed the Motion; and the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (c) notice of the Motion was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establish grounds for the relief granted herein;

IT IS HEREBY ORDERED THAT:

The Motion is GRANTED.

The Debtors are authorized to file redacted versions of the Wind Down Agreements related to the wind-down of the Debtors’ Michigan Facilities as exhibits to the Wind Down Stipulations.

Dated: New York, New York  
\_\_\_\_\_, 2009

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.