

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

MAREMONT CORPORATION, et al.,<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-10118 (KJC)

(Jointly Administered)

Ref. Docket Nos. 68 & 69

**DEBTORS' OBJECTION TO UNITED STATES TRUSTEE'S MOTION TO  
SHORTEN TIME FOR NOTICE OF THE UNITED STATES TRUSTEE'S MOTION TO  
APPOINT A LEGAL REPRESENTATIVE FOR FUTURE ASBESTOS CLAIMANTS**

Maremont Corporation and its affiliated debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") submit this objection (this "Objection") to the *United States Trustee's Motion to Shorten Time for Notice* (the "Motion to Shorten") of the *United States Trustee's Motion to Appoint a Legal Representative for Future Asbestos Claimants* [Docket Nos. 68, 69] (the "UST FCR Motion") filed by the United States Trustee for the District of Delaware (the "U.S. Trustee"). In opposition to the Motion to Shorten and the UST FCR Motion, the Debtors respectfully state as follows:

**BACKGROUND**

**A. General Background**

1. On January 22, 2019 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Court"). The Debtors have continued in possession of

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<sup>1</sup> The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal taxpayer identification number, are: Maremont Corporation (6138); Maremont Exhaust Products, Inc. (9284); AVM, Inc. (9285); and Former Ride Control Operating Company, Inc. (f/k/a ArvinMeritor, Inc., a Delaware corporation) (9286). The mailing address for each Debtor for purposes of these chapter 11 cases is 2135 West Maple Road, Troy, MI 48084.

their properties and have continued to operate as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On February 4, 2019, the U.S. Trustee appointed an official committee of asbestos personal injury claimants (the “Asbestos Claimants Committee”). No party has requested the appointment of a trustee or examiner in these Chapter 11 Cases.

2. On the Petition Date, the Debtors filed the *Joint Prepackaged Plan of Reorganization of Maremont Corporation and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 10] (the “Plan”) and the related disclosure statement [Docket No. 11] (the “Disclosure Statement”). At a hearing held on January 23, 2019 (the “First Day Hearing”), the Court entered an order scheduling a combined hearing for March 18, 2019 at 1:00 p.m. (prevailing Eastern Time) to consider approval of the Disclosure Statement and confirmation of the Plan [Docket No. 30].

3. Additional information regarding the Debtors’ business, capital structure and the circumstances preceding the Petition Date may be found in the *Declaration of Carl Anderson, II in Support of First Day Pleadings* [Docket No. 3].

## **B. Relevant Factual Background**

4. On January 31, 2019, the Debtors filed the *Debtors’ Motion for Entry of an Order Appointing James L. Patton, Jr., as Legal Representative for Future Asbestos Claimants, Nunc Pro Tunc to the Petition Date* [Docket No. 44] (the “Debtors’ FCR Motion”).

5. On February 14, 2019, the U.S. Trustee filed its objection to the Debtors’ FCR Motion [Docket No. 63] (the “UST Objection”). On February 20, 2019, the Debtors filed their reply to the UST Objection [Docket No. 76] (the “Debtors’ Reply”). The Debtors’ FCR Motion and the UST Objection are scheduled to be heard at a hearing on February 25, 2019 at 10:00 a.m. (prevailing Eastern Time) (the “February 25 Hearing”). Among other things, the UST Objection seeks an additional 30 days so that the U.S. Trustee can propose new candidates.

6. At the First Day Hearing, the U.S. Trustee indicated that it would file a motion for the appointment of a court-appointed future claimants' representative on an expedited basis "early next week," i.e., the week of January 28, 2019. See Transcript of First Day Hearing at 27:12-31:14 [Docket No. 45] (hereinafter "First Day Transcript").

7. The U.S. Trustee ultimately filed the UST FCR Motion<sup>2</sup> on February 20, 2019. Concurrently therewith, the U.S. Trustee filed the Motion to Shorten, seeking to shorten (a) the notice period required for the UST FCR Motion from fourteen days to five days (including a date the Court was closed due to inclement weather), and (b) proposed an objection deadline for the UST FCR Motion of February 22, 2019, at 11:00 a.m. (prevailing Eastern Time) (as set forth in the proposed order accompanying the Motion to Shorten) or 4:00 p.m. (prevailing Eastern Time) (as set forth in the caption of the UST FCR Motion) – approximately 48 hours after the UST FCR Motion was filed.

### **OBJECTION TO MOTION TO SHORTEN**

8. The Debtors object to the Motion to Shorten because (a) it does not meet the standard to justify the relief requested, and (b) it would not allow the Debtors or other interested parties an adequate opportunity to evaluate and respond to the UST FCR Motion, and would unfairly prejudice the Debtors' ability to prosecute their own FCR Motion – which was properly noticed and briefed.

#### **A. The Motion To Shorten Does Not Meet The Standard For Relief.**

9. The Motion to Shorten should be denied because it does not meet the standard for shortened notice under Rule 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"). Local Rule

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<sup>2</sup> The Debtors and their estates reserve any and all rights with respect to the relief requested in the UST FCR Motion, and nothing herein is intended or shall be deemed to impair, prejudice, waive, or otherwise affect such rights.

9006-1 requires that all motion papers be filed and served at least fourteen (14) days prior to the hearing date. DEL. BANKR. L.R. 9006-1(c)(1). Local Rule 9006-1 also mandates that objection deadlines be set so as to permit objections to be filed at least seven (7) days prior to the hearing date. DEL. BANKR. L.R. 9006-1(c)(ii). The notice period may only be shortened on “written motion (served on all interested parties) specifying the exigencies justifying shortened notice.” DEL. BANKR. L.R. 9006-1(e); see also FED. R. BANKR. P. 9006(c)(1) (authorizing the court to shorten notice “for cause shown”).

10. The Motion to Shorten does not provide any exigency justifying shortened notice. The sole reason offered by the U.S. Trustee for shortening the notice period is that doing so would allow the UST FCR Motion to be heard at the same time as the Debtors’ FCR Motion at the February 25 Hearing. See Motion to Shorten ¶¶ 9–10. This is not an exigency, and the Motion to Shorten does not cite any authority suggesting that one party’s desire to have its own, competing motion heard at the same time as another party’s motion satisfies the Local Rule 9006-1(e) standard.

11. More fundamentally, the U.S. Trustee’s claimed “exigency” is of its own creation. The February 25 Hearing was scheduled at the First Day Hearing, and the U.S. Trustee knew then the planned timing for the Debtors’ FCR Motion. The U.S. Trustee thus had ample opportunity to file the UST FCR Motion with a normal notice period. Indeed, the U.S. Trustee represented at the First Day Hearing that it anticipated filing its competing motion the week of January 28, 2019. See First Day Transcript at 20:16-21, 27:12-31:14 (“[H]opefully, we will be able to file [the UST FCR Motion], given the circumstances, early next week [the week of January 28]. And we would want to seek to have that so that . . . the process doesn’t become attenuated.”).

12. The U.S. Trustee chose not to file the UST FCR Motion the week of January 28, 2019, and instead chose to file it nearly a month later, on February 20, 2019. The Motion to Shorten offers no explanation for this delay. The UST FCR Motion itself makes clear that the delay was not the result of any need to identify candidates: the motion proposes three candidates that the U.S. Trustee had proposed in *In re Fairbanks Co.* on January 31, 2019, and the supporting materials for those candidates are dated prior to the First Day Hearing. Compare UST FCR Motion Exs. 1 (dated January 17, 2019), 3 (dated January 16, 2019), 4 (dated January 10, 2019) with *In re Fairbanks Co.*, Case No. 18-41768 (PWB) (Bankr. N.D. Ga. Jan. 31, 2019), Notice of Candidates for the Legal Representative for Future Asbestos Claimants Submitted by the United States Trustee [Docket No. 202].<sup>3</sup>

13. The U.S. Trustee thus created the purported need to shorten the notice period by choosing to wait and file the UST FCR Motion five days before the February 25 Hearing. It is well established that cause to shorten notice periods is not shown where the purported exigency is of the movant's own creation. See, e.g., In re Villareal, 160 B.R. 786, 787 (Bankr. W.D. Tex. 1993); Official Comm. of Disputed Litig. Creditors v. McDonald Inv. Inc., 42 B.R. 981 (N.D. Tex. 1984); see also In re Fort Wayne Assocs., Case No. 97-10378, 1998 WL 928419, at \*1 (Bankr. N.D. Ind. Dec. 16, 1998) (“Whether an ‘emergency’ exists is determined not by the immediacy of any particular party’s need but, rather, by the suddenness with which that need arose. . . . Parties cannot dally in the administration of a case and then expect the court to extricate them from an uncomfortable situation through an ‘emergency motion.’”); In re Schindler, Case No. 09-71199-AST, 2011 WL 1258531, at \*3 (Bankr. E.D.N.Y. Mar. 31, 2011) (denying motion to shorten and stating that “[the] failure to plan ahead does not rise to the level

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<sup>3</sup> The supporting materials for the fourth candidate proposed by the UST FCR Motion are undated. See UST FCR Motion Ex. 2.

of a genuine emergency justifying shortened notice or expedited relief”) (citation omitted); In re Coldwater Creek, Case No. 14-10867 (Bankr. D. Del. June 9, 2014) (BLS) [Docket No. 538] (denying motion to shorten notice period and expedite hearing on unsecured creditors committee’s motion to terminate debtors’ exclusivity periods for lack of cause where committee strategically delayed filing a motion).

**B. The Motion To Shorten Would Unfairly Prejudice The Debtors And Other Interested Parties.**

14. The Motion to Shorten should also be denied because it would unfairly prejudice the Debtors and interested parties. Local Rule 9006 sets notice periods to ensure that parties in interest are provided with sufficient time to review the motion, analyze and assess whether the relief requested is appropriate, and prepare a thoughtful and well-reasoned response or objection to the relief requested. This allows the issues to be clearly presented to the Court for considered decision.

15. The Motion to Shorten would unnecessarily undermine these objectives of the notice periods. Sufficient time to review, analyze, and respond to the UST FCR Motion is particularly important given its proposal of four FCR candidates. These candidates must be vetted, and the Motion to Shorten would not allow the Debtors or other interested parties adequate time to develop any factual records regarding the candidates. As discussed at length in the Debtors’ FCR Motion and Debtors’ Reply, the proper standard for the Court to appoint an FCR is the disinterestedness standard. Moreover, it is the burden of parties that object to an appointment to rebut any *prima facie* showing of such standard. If necessary, the Debtors would potentially want to propound discovery and further investigate the candidates proposed by the U.S. Trustee, and the timing of the UST FCR Motion (for which the U.S. Trustee provides no justification) denies them and other interested parties the ability to do so. By the U.S. Trustee’s

own admission, “it is imperative for an FCR to be fairly chosen.” UST FCR Motion ¶ 10. Providing the Debtors and other interested parties with two days to object and five days to prepare for a hearing on four proposed FCR candidates is not a fair process.

16. In fact, the UST FCR Motion does not propose any process, much less an orderly process, by which the Court would consider both the Debtors’ FCR Motion and the UST FCR Motion at the February 25 Hearing. The UST FCR Motion seeks only to “hav[e] these matters all heard at” the same time, but does not explain how the Court is to evaluate the competing motions.<sup>4</sup> The Debtors are unclear as to how such a hearing would proceed and how best to prepare for such a hearing, and it is unrealistic to expect the parties to prepare for such a hearing with no guidance or discussion of how it would proceed. In any scenario, the Debtors’ ability to properly prepare for such a combined hearing would be significantly prejudiced given the timing constraints proposed by the U.S. Trustee in its motions.

17. Moreover, granting the Motion to Shorten would unfairly prejudice the Debtors’ ability to prosecute their own FCR Motion at the February 25 Hearing. Allowing the UST FCR Motion to proceed at the February 25 Hearing will deprive the Debtors of time to prepare their own presentation. Indeed, the U.S. Trustee’s proposed objection deadline on approximately 48 hours’ notice – by the Friday afternoon before the Monday-morning February 25 Hearing – deprives the Debtors of critical preparation time. In addition, the relief sought in the UST FCR Motion conflicts with relief sought in the UST Objection, which seeks to continue the February 25 Hearing for 30 days.

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<sup>4</sup> This question also vexed the court in *In re Fairbanks Co. In re Fairbanks Co.*, Case No. 18-41768 (PWB) (Bankr. N.D. Ga. Dec. 18, 2018), Transcript of Hearing on Debtor’s Motion for an Order Appointing James L. Patton, Docket No. 167, at 9:24-14:24; 26:18-27:4 [Docket No. 167] (“THE COURT: [W]hat am I supposed to do[,] interview people? Have a hearing? Have five, ten people come up here and sit in the stand and I, you know[,] sit back and maybe we can make an exception and have coffee in the courtroom, have a little discussion about, you know, a job interview.”).

18. The U.S. Trustee has sewn more confusion than added value to the FCR appointment process by choosing to delay filing the UST FCR Motion by nearly a month from what it represented at the First Day Hearing, and by choosing to file the UST Objection seeking apparently conflicting relief.<sup>5</sup> This confusion means that the U.S. Trustee's request to accelerate consideration of the UST FCR Motion is particularly prejudicial to the Debtors' and other interested parties' ability to present thoughtful and well-reasoned argument to the Court. In fact, there should be very little confusion: if the Court overrules the UST Objection and appoints Mr. Patton as FCR at the February 25 Hearing, the UST FCR Motion will be moot. If the Court is prepared to consider other FCR candidates, the Debtors and other parties in interest should not be forced to forego diligence and adequate preparation, and the Court should not be rushed to judgement on such candidates. The Motion to Shorten should be denied.

#### **PRELIMINARY OBJECTION TO UST FCR MOTION**

19. Despite the delay in filing the UST FCR Motion, it contains little evidence (such as an affidavit of disinterestedness from any of the candidates) to assist the Debtors or the Court in substantively evaluating the relief requested or to demonstrate that the U.S. Trustee has engaged in a substantive analysis of potentially disinterested candidates with respect to the Debtors' Chapter 11 Cases.<sup>6</sup> Rather, as discussed above, the U.S. Trustee appears to have proposed the same candidates in *In re Fairbanks Co.* and provided the same materials in support of these candidates. In short, the U.S. Trustee has not made a *prima facie* case showing that any of its proposed candidates are disinterested. Without waiving their right to object to the UST

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<sup>5</sup> Notably, the U.S. Trustee did not provide any notice to the Debtors that it still intended to file the UST FCR Motion after not doing so in the timeframe represented at the First Day Hearing. Even the UST Objection, filed on February 14, 2019, provides no indication that the U.S. Trustee would file a competing FCR Motion.

<sup>6</sup> As stated above, the Debtors and their estates reserve any and all rights with respect to the relief requested in the UST FCR Motion and their opportunity to object on the merits, and nothing herein is intended or shall be deemed to impair, prejudice, waive, or otherwise affect such rights.

FCR Motion after appropriate notice, the Debtors believe that UST FCR Motion fails facially on the merits, and should be denied.

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**CONCLUSION**

Any hearing on the UST FCR Motion should be on appropriate notice, having given the Debtors (and all parties in interest) the opportunity to develop the factual record and present their case to the Court. Based on the U.S. Trustee's unexcused delay in filing the FCR UST Motion and the prejudicial impact that shortened notice would have on the Debtors, the U.S. Trustee has failed to demonstrate cause to shorten notice, and, thus, the Debtors respectfully request that the relief requested in the Motion to Shorten be denied.

Dated: February 21, 2019  
Wilmington, Delaware

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COLE SCHOTZ P.C.

*/s/ J. Kate Stickles*

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