

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

In re:

Chapter 11

MAREMONT CORPORATION, *et al.*,¹

Case No. 19-10118 (KJC)

Jointly Administered

Debtors.

Related D.I. 107

**COMPENDIUM OF TRANSCRIPTS CITED TO IN OBJECTION OF THE
OFFICIAL COMMITTEE OF ASBESTOS CLAIMANTS TO THE MOTION OF THE
OFFICE OF THE UNITED STATES TRUSTEE TO APPOINT A LEGAL
REPRESENTATIVE FOR FUTURE ASBESTOS CLAIMANTS**

Transcript

Exhibit

In re Duro Dyne Nat’l Corp., No. 18-27963-MBK (Bankr. D.N.J.), Hr’g Tr. p. 35-37,
Oct. 1, 2018.....1

In re Duro Dyne Nat’l Corp., No. 18-27963-MBK (Bankr. D.N.J.), Hr’g Tr. p. 22-23,
Oct. 17, 2018.....2

In re Leslie Controls Inc., No. 10-12199 (CSS) (Bankr. D. Del.) Hr’g Tr. p. 70-72,
Aug. 9, 20103

¹ The Debtors (“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.

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY (TRENTON)

IN RE: . Case No. 18-27963 (MBK)
. .
. .
DURO DYNE NATIONAL . United States Courthouse
CORP, et al., . 402 East State Street
. Trenton, NJ 08608
Debtors. .
. October 1, 2018
. 11:19 a.m.

TRANSCRIPT OF SECOND DAY HEARING
BEFORE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtors: Lowenstein Sandler
By: JEFFREY D. PROL, ESQ.
One Lowenstein Drive
Roseland, NJ 07068

For the U.S. Trustee: Office of the United States Trustee
By: JEFFREY M. SPONDER, ESQ.
ROBERT SCHNEIDER, ESQ.
MITCHELL B. HAUSMAN, ESQ.
One Newark Center
Newark, NJ 07102

Audio Operator: Kathleen Feeley

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J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@jjcourt.com

(609) 586-2311 Fax No. (609) 587-3599

1 going to say, "who is that. Where did he come from? And how
2 do I know that he really had my interest at heart?" And what
3 we do today is going to decide how those questions get answered
4 years from now.

5 We owe it to that future victim to ensure that the
6 process for appointing a futures claims representative is
7 transparent and unbiased and that the standard for the future
8 claims representatives appointment is that of a conflict free
9 fiduciary capable of being a zealous advocate for future
10 victims.

11 I want to make sure that we focus, and focus for this
12 whole hearing. We're talking about the constitutional due
13 process rights of absent victims. That's what the appointment
14 of a future claims representative is about. It's not for the
15 convenience of the debtor, not for the convenience of the
16 current claimants. Future claims representative, the future
17 claimants are interested in us getting this right, not getting
18 this done fast.

19 So we aren't objecting to the appointment of a future
20 claims representative, obviously. If there's going to be a
21 plan with a 524(g) challenging injunction, we're going to have
22 to have one. And we don't advocate any per se rule that
23 applies across the board to all asbestos bankruptcy cases
24 prepackaged or not. We simply object to the granting of this
25 motion as presented because it lacks the information required

1 to show that Mr. Fitzpatrick is not subject to any undue
2 influences that would interfere with his ability to carry out
3 the future claims representative's duties to future asbestos
4 claimants.

5 The appointment of a future claims representative is
6 one of the most important decisions this Court will make in
7 this case. We owe it to the process and the bankruptcy system
8 as a whole to be careful to ensure that the right decision is
9 made.

10 As everyone acknowledges and the Third Circuit has
11 held in Combustion Engineering, the future claims
12 representative is a fiduciary to the future claimants. And as
13 the Third Circuit held in Amatex 35 years ago, the future
14 claimants' interest are adverse to those of the debtor. And
15 they're adverse to those of the current claimants. It's a dead
16 letter in this circuit. They're not pals; they're adversaries.
17 The future claims representative has to be able to zealously
18 advocate on behalf of these absent people, who unlike the
19 debtors' attorneys' client can't call them and complain, or the
20 committee's client can't call them and complain. We have to
21 make, this is higher level, we have to make very careful and
22 make very careful, make very sure that the person who is being
23 appointed can carry out those fiduciary duties.

24 The duty to appoint falls on this Court, not the
25 parties. In the WR Grace case we're talking about, we pointed

1 out that it didn't fall on us, and that's right, Congress
2 didn't give it to us. Congress also didn't say that the debtor
3 can hire whoever they want with the Court's approval which
4 they've said in other statutes. Congress didn't say that the
5 appointment is made after consultation with parties in interest
6 like they said in other statutes. The appointment is made by
7 the Court.

8 The debtor picking the future claims representative
9 is like the debtor picking its own examiner, or picking its own
10 committee members. No one would ever think those things could
11 be done. You don't get to pick your adversary. And again, the
12 Third Circuit said in Amatex, it's their adversary. If the
13 Yankees got to pick an opponent for a one game playoff in the
14 World Series, would they pick the Red Sox or the Orioles?
15 Okay. You would pick someone who is not going to advocate
16 zealously against you if you got to pick your own adversary.
17 That's why Congress left the decision to you and you alone.
18 Whoever you pick and however you select them, the future claims
19 representative must be able to withstand all pressures by the
20 debtors who want to put as little money as possible into the
21 trust. And the current claimants who want to get paid as soon
22 as possible and don't really mind if they take all the money
23 out while doing it.

24 And the cases cited by the debtors -- they only cited
25 a couple of reported decisions. The things that they dumped on

C E R T I F I C A T I O N

We, THERESA PULLAN and TERRI STARKEY, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of our ability.

/s/ Theresa Pullan

THERESA PULLAN

/s/ Terri Starkey

TERRI STARKEY

J&J COURT TRANSCRIBERS, INC.

DATE: January 29, 2019

EXHIBIT 2

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 18-27963 (MBK)
	.	
	.	
DURO DYNE NATIONAL	.	United States Courthouse
CORP., et al.	.	402 East State Street
	.	Trenton, NJ 08608
Debtors.	.	
	.	October 16, 2018
. . . . .	.	1:56 p.m.

TRANSCRIPT OF COURT DECISION ON DEBTORS' MOTION
BEFORE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For the Debtors:	Lowenstein Sandler By: JEFFREY D. PROL, ESQ. One Lowenstein Drive Roseland, NJ 07068
For the U.S. Trustee:	Office of the United States Trustee By: JEFFREY M. SPONDER, ESQ. ROBERT SCHNEIDER, ESQ. One Newark Center Newark, NJ 07102

Audio Operator: Kathleen Feeley

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Hamilton, New Jersey 08619
E-mail: jjcourt@jjcourt.com

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1 trust documents.

2 This Court will not however imperil this company's
3 reorganization, add layers of additional administrative
4 expenses, place at risk the jobs of hundreds of employees, or
5 unnecessarily jeopardize the recoveries for present and future
6 claimants by delaying this reorganization through the
7 appointment of a new future rep, who must retain professionals,
8 engage in his or her own due diligence, only to reach the same
9 point of review to which Mr. Fitzpatrick assents at this
10 present time.

11 It is this Court's hope and expectation that through
12 continued negotiation the parties here will reach an accord on
13 a plan, trust and TDP documents which address valid criticisms
14 and concerns and serve as a protocol for future cases and for
15 use by future FCRs. This Court will strive to ensure that such
16 efforts are undertaken.

17 Finally, as to the issues relative to Mr.
18 Fitzpatrick's failure to previously raise certain objections or
19 on -- as to issues in the current plan and trust documents, I
20 note the obvious, no court previously has mandated the changes
21 proffered in the objections raised to date, and it is
22 unsurprising that professionals have continued to use
23 approaches which they regard as successful and appropriate.
24 This Court does not view such positions taken by Mr.
25 Fitzpatrick or his counsel as necessarily disqualifying him as

1 the FCR in this case.

2 That being said, the debtor, the committee and Mr.
3 Fitzpatrick should understand that there can be value and valid
4 reasons to -- I'm sorry, to challenge and reconsider the status
5 quo. However, the Court likewise recognizes that academic
6 articles and studies by think tanks may often be bottomed on
7 inaccurate assumptions or specific agendas.

8 In sum, the Court commits to according the issues
9 heightened scrutiny, but sees no reason to retard the process
10 by appointing a different FCR.

11 For these reasons the motion filed by the debtors to
12 retain Mr. Fitzpatrick as an FCR will be granted. The Court
13 will enter the order that was annexed to the original motion.
14 Thank you, all. See you at the next hearing. The matter --

15 UNIDENTIFIED ATTORNEY: Your Honor.

16 THE COURT: Yes?

17 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

18 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

19 THE COURT: All right. Thank you.

20 * * * * *

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23
24
25

C E R T I F I C A T I O N

I, COLETTE MEHESKI, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Colette Meheski

COLETTE MEHESKI

J&J COURT TRANSCRIBERS, INC. DATE: October 17, 2018

EXHIBIT 3

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	)	Case No. 10-12199 (CSS)
	)	(Jointly Administered)
)	
LESLIE CONTROLS, INC.,	)	Chapter 11
)	
	)	Courtroom 6
	)	824 Market Street
Debtors.	)	Wilmington, Delaware
)	
	)	August 9, 2010
	)	3:06 p.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JUDGE CHRISTOPHER S. SONTCHI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Debtors:	Cole Schotz Meisel Forman & Leonard, PA
	BY: NORMAN PERNICK, ESQ.
	BY: MARIAN QUIRK, ESQ.
	500 Delaware Avenue, Ste. 1410
	Wilmington, DE 19801
	302-652-2012

ECRO: LESLIE MURIN

Transcription Service:	DIAZ DATA SERVICES
	331 Schuylkill Street
	Harrisburg, Pennsylvania 17110
	(717) 233-6664
	www.diazdata.com

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1 THE COURT: All right, thank you. Well I'm going
2 to grant the motions and overrule the objections subject to
3 a couple comments or in addition I'll provide some comments.

4 One, in connection with the narrow issues in
5 front of the Court today which are -- is in effect the
6 retention -- well the appointment and -- of the FCR and the
7 retention of its counsel. I think it's a very weak argument
8 that the insurers have standing on that issue. I think that
9 in all likelihood were I to rule on it as opposed to
10 assuming it, I would rule there was no standing. But given
11 where I am on the merits, I need not reach the standing
12 issue. So assuming arguendo that the -- excuse me, that the
13 insurers have standing, I will nonetheless overrule the
14 objection based on the merits of their objection.

15 Specifically in connection with what standard
16 applies, I am going to apply the disinterestedness test.
17 And I would note that the disinterested test is the highest
18 level of duty or standard in the Bankruptcy Code for the
19 appointment of anybody. It -- the legislative history of
20 the disinterestedness test goes back 70 years and came out
21 of the equity receivership issues that were identified in
22 the 1930's as being abusive. And were designed specifically
23 to get pre-petition committees like they existed in those
24 days, as well as, lawyers who were appointing themselves all
25 the time out of the system and it's very strict. So I don't

1 think the disinterestedness test is some sort of layup, it's
2 quite stringent. And I also think it's the appropriate
3 standard to apply in this case since none is specifically
4 identified.

5 There are issues about appearance, you know,
6 actual conflict of interest versus implied conflict of
7 interest, et cetera that could be applied. But in any
8 event, I don't believe and I find that there are no such
9 allegations or concerns in this case. I think the
10 appointment of a future claims representative to assist in
11 connection with negotiating the prepackaged plan is
12 appropriate and in many ways I would say preferable. I
13 don't believe there's anything in the statute that -- well
14 first of all, the Bankruptcy Code doesn't say pre-negotiated
15 plan anywhere in it. It talks about plans and it talks
16 about pre-packed plans. There is no such thing in the
17 Bankruptcy Code as a pre-negotiated plan. It is something
18 that is developed over time and is a very efficient way to
19 get in and out of bankruptcy usually. Designed to get a
20 case through, usually a case that really only involves a
21 financial restructuring, a fixing of the balance sheet, not
22 substantive business like issues. And that's what we have
23 here. This company is not in bankruptcy to fix itself from
24 an operational standpoint. It's in bankruptcy to deal with
25 in effect a financial restructuring.

1 So to say somehow that 524(g), you know, doesn't
2 contemplate or a prepackaged plan of -- excuse me, a pre-
3 negotiated plan of reorganization I think misses the point.
4 The point is whether having Mr. Patton operating as an FCR
5 pre-petition and post petition somehow is so improper or
6 makes him not disinterested in such a way as to prevent him
7 being hired on a post-petition basis. And it -- clearly in
8 my mind it does not.

9 I do not believe and do not find as -- I find
10 that Mr. Patton was not an employee of the debtor within the
11 previous two years. I believe that the analogy of an ad hoc
12 committee, if you will, where the debtor is marrying the
13 burden of paying the cost of its adversaries is not uncommon
14 and, you know, the debtor should get used to it because once
15 they file bankruptcy it gets even worse. So that doesn't --
16 that -- in this situation, that does not violate the
17 disinterestedness test.

18 Obviously, Mr. Patton is well-known to the
19 asbestos bar. He's well-known to the bankruptcy bar
20 nationally. He's well-known to the Delaware bar. And I
21 have no doubt in my mind that he will work diligently on
22 behalf of the future claimants. And I think it's an
23 interesting comment to say well the Court should appoint him
24 and not the debtor. Well I am -- the act that I'm being
25 asked to do is to appoint him. He's been brought forward by