

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

In re:)	Chapter 11
)	
MET-COIL SYSTEMS CORPORATION,)	
)	
Debtor.)	Case No. 03-12676 (MFW)
)	Ref. Docket No. 239

**OBJECTION OF MESTEK, INC. TO THE APPLICATION OF THE
OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AN ORDER
AUTHORIZING AND APPROVING THE EMPLOYMENT AND RETENTION
OF BEDERSON & CO. LLP, AS SPECIAL ENVIRONMENTAL
FINANCIAL CONSULTANTS TO THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS *NUNC PRO TUNC* TO OCTOBER 9, 2003**

Mestek, Inc. ("**Mestek**"), the pre-petition and post-petition lender to, and indirect parent of, Met-Coil Systems, Inc., debtor and debtor-in-possession herein (the "**Debtor**"), submits this objection (the "**Objection**") to the Application of the Official Committee of Unsecured Creditors of Met-Coil Systems Corporation (the "**Committee**") for an Order Authorizing and Approving the Employment and Retention of Bederson & Co. LLP as its Special Environmental Financial Consultants *Nunc Pro Tunc* to October 9, 2003 (the "**Application**").¹ In opposition to the Application, Mestek respectfully states as follows:

Background

Since its formation on September 5, 2003, the Committee has retained the following professionals in connection with this chapter 11 case: (i) Klehr, Harrison, Harvey, Branzburg & Ellers, LLP ("**Klehr Harrison**") as counsel to the Committee; and (ii) Parente Randolph, LLC as financial advisors to the Committee ("**Parente**," and together with Klehr Harrison, the "**Existing Committee Professionals**"). Now, pursuant to the Application, the Committee seeks authority from this Court to add a third advisor, Bederson & Co. LLP ("**Bederson**"), to its arsenal of

¹ Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Application and the Plan (defined below).

Existing Committee Professionals. Bederson's retention is unnecessary, duplicative of other professionals and likely will serve only to burden the estate with additional fees.

Argument

The Debtor is a wholly-owned subsidiary of Formtek, Inc. ("**Formtek**"), which in turn is a wholly-owned subsidiary of Mestek. In support of its indirect subsidiary, among other things, Mestek has extended more than \$20 million in credit, guarantees and loans to the Debtor to assist the Debtor in meeting its ordinary businesses obligations and the extraordinary demands of the Debtor's environmental liabilities. Additionally, during this chapter 11 case, Mestek, as the DIP Lender, has provided \$8 million in debtor-in-possession financing to the Debtor.

On November 6, 2003, the Debtor caused to be filed with the Court the "Chapter 11 Plan of Reorganization Proposed by Met-Coil Systems Corporation and Mestek, Inc. as Co-Proponents" (the "**Plan**"). Under the Plan, among other things, Mestek (in the event that it is the Winning Plan Sponsor), has committed to make the following contributions and payments under the Plan to purchase the New Common Stock and resolve Claims:

- ?? Contribute more than \$18.5 million to fund distributions under the Plan;
- ?? Guarantee up to \$3 million in environmental remediation costs;
- ?? Fund the Capital Contribution;² and
- ?? Fund the Mejdrech Hook-Up Costs, which are estimated at \$1 million.

All of these contributions and payments make the Plan feasible and alleviate the Debtor's financial burdens, especially with respect to environmental remediation.

² Under the Plan, "Capital Contribution" means, in the event Mestek is the Winning Plan Sponsor, the amounts paid or contributed to the Reorganized Debtor by Mestek on the Effective Date in order to fund, in part, distributions under the Plan including (i) contribution of its Class 3.2 Claims and its Class 4.3 Claims, (ii) funding to the extent necessary of the amounts for distributions to holders of Class 4.1 Claims, Class 4.2 Claims, Class 5.1 Claims, Class 5.2 Claims, Class 6.1 Claims and Class 6.2 Claims, (iii) funding the Unsecured Claims Distribution Fund, (iv) funding the TCE Trust, and (v) funding of any additional amount necessary to adequately capitalize the Reorganized Debtor.

With this support from Mestek, the Debtor is now focused on moving the Plan, which the Debtor and Mestek believe to be a confirmable plan of reorganization, towards confirmation without the unnecessary distraction of another Committee-retained environmental financial consultant. While Mestek recognizes the Committee's belief that it is appropriate to retain Bederson to conduct a financial analysis of the Debtor's environmental liabilities, for the reasons described below, Mestek respectfully submits that the retention of a third Committee professional in connection with this relatively small case is unnecessary, duplicative and, as such, not in the best interests of the estate and the creditors in this case. Accordingly, the Application should be denied.

A. Parente is Capable of Conducting Environmental Analysis

Pursuant to the Application for an Order Pursuant to Sections 1103(a) and 328(a) of the Bankruptcy Code Authorizing and Approving the Employment and Retention of Parente Randolph, LLC, as Accountants and Financial Advisors to the Official Committee of Unsecured Creditors *Nunc Pro Tunc* to September 15, 2003 (the "**Parente Application**"), the Committee retained Parente as its financial consultant. Under paragraph 7.g. of the Parente Application, the Committee is authorized to request, among other things, that Parente "assist the Committee in its investigation of the acts, conduct, assets, liabilities, and financial condition of the Debtor" Presumably, as financial advisor, Parente's retention was meant to include assistance with the Committee's analysis of the Debtor's environmental-related liabilities.

Paragraph 5 of the Application states that "the Committee has determined that it would be in its best interest to retain special environmental financial consultants . . . to assist the Committee and its counsel in the financial analysis of the Debtor's environmental liabilities. . . ." Mestek respectfully submits that Parente, a firm employing 56 principals and 350 employees, is fully capable of conducting the financial analysis of the Debtor's environmental liabilities—an

analysis that clearly was contemplated under paragraph 7 of the Parente Application—for which the Committee now seeks to retain Bederson. Were this Court to authorize the Committee's retention of Bederson, the Committee would then employ two financial advisors with overlapping functions that virtually guarantees a costly duplication of effort.

B. The Legal Representative Currently is Conducting the Same Analysis for Which the Committee Seeks to Retain Bederson

In accordance with the Legal Representative Order and pursuant to the Plan, the Legal Representative, serving in a fiduciary capacity, is employed to represent the interests of the Future TCE Claimants for the purpose of protecting the rights of persons who might subsequently assert Unasserted Claims against the Debtor, Mestek, Formtek or any other Met-Coil Affiliate. The appointment of the Legal Representative is intended to ensure that all parties in interest, including the interests of the creditors represented by the Committee, have a fair opportunity to participate in the reorganization process.

The primary function of the Legal Representative, who is an independent third party charged with representing the interests of the Future TCE Claimants and negotiating on their behalf, is to assess the extent of and present value of potential, future property damage and personal injury claims relating to TCE exposure. In other words, the primary function of the Legal Representative is to conduct the same financial analysis of the Debtor's environmental liabilities as that for which the Committee seeks to employ Bederson. As a means to enable the Legal Representative to conduct such an analysis, on October 10, 2003, the Legal Representative sought authority to retain Analysis, Research & Planning Corporation, as a consultant, to assist the Legal Representative in analyzing and quantifying the Debtor's future TCE liability. Additionally, on October 24, 2003, the Legal Representative filed an application for an Order authorizing the retention and employment of Exponent as toxicologists and epidemiologists.

Exponent is to provide consulting services and to analyze and produce studies and estimates of potential health problems and accompanying damages resulting from the alleged release of TCE from the Lockformer Site, and provide other services or litigation support as may be necessary.

Should this Court authorize such retentions, the Committee will, in essence, have achieved its stated end result of "employ[ing] the services of [a special environmental consultant] to assist the Committee and its counsel in the financial analysis of the Debtor's environmental liabilities as may be necessary and beneficial to the Committee and the unsecured creditors." Under the Application, this assistance includes evaluating the Debtor's financial projections and testing the reasonableness of the assumptions used in developing the same based upon the Debtor's environmental liabilities. For this analysis, Mestek respectfully submits that the Committee should rely on the analyses of the Legal Representative as his professionals, all of whom are independent parties that were either appointed or retained without objection from the Committee. As such, retention of a third Committee professional in this relatively small chapter 11 case would be redundant and place unnecessarily an additional financial burden on the estate.

C. There Currently Exists Sufficient Information and Resources to Assist the Committee with Its Environmental Analysis

Numerous professionals have been retained by the Debtor, Mestek, other parties to the environmental liability-based litigation and now, the Legal Representative, to conduct the type of analysis for which the Committee seeks to retain Bederson. The Committee should tap into these vast resources through interviews of these numerous professionals who conducted the environmental analyses and/or by reviewing the voluminous documentation generated in connection with such analyses before rushing to have Bederson conduct its own analysis from scratch. Additionally, John A. Connor, P.E., a member of the Committee, is President of Groundwater Services, Inc. and a registered professional engineer with over 23 years of

experience in environmental engineering specializing in the areas of environmental site investigation, human and ecological risk assessment and corrective action design. Connor was retained by the Debtor and Honeywell International Inc. to provide an assessment of soil and groundwater conditions in the vicinity of the Lockformer facility in Lisle, Illinois. In addition, Connor evaluated information regarding the compliance of Lockformer's environmental operations and corrective action program with applicable environmental laws, regulations and standards of practice. For the purposes of his evaluation, Connor reviewed extensive technical information regarding this site and the surrounding area, including environmental site investigation reports and associated data. In connection with his evaluation, Connor prepared a sixty-eight page report dated August 5, 2003, a portion of which is attached. As a result of Connor's past efforts, the Committee already possesses extensive information regarding the soil and groundwater conditions in the vicinity of the Lockformer facility.

Through a review of the existing documentation and interviews of various professionals, including one of the Committee's own members, who conducted analyses of the Debtor's environmental liabilities, the Committee and their existing professionals are capable of conducting the environmental analysis without the retention of Bederson.

D. Retention of Bederson is Unnecessary, Will Result in a Duplication of Effort and is Not Supported By Established Case Law

The ultimate determination of whether professional representation is in best interest of the bankruptcy estate falls within sound discretion of this Court. As discussed above, the collective expertise of the Existing Committee Professionals clearly is substantial and certainly encompasses the categories of services set forth in the Application. Bederson's services, therefore, are unnecessary. Simply stated, the Committee is not permitted to envelop itself with duplicative advisors at the expense of the estate. See *In re Glosser Bros.*, 102 B.R. 38

(Bankr.W.D.Pa.1989). See also *In re Saxon Industries*, 29 B.R. 320, 322 (Bankr.S.D.N.Y.1983) (finding that "[a] party's request for independent professional services should be denied if such services are clearly duplicative and wasteful"). In making the determination as to whether retention of a professional is in the best interest of the estate and the creditors in this case, a cost-benefit analysis must be made at all times in order to distribute as much money to creditors as quickly as possible. See *In re Hutter Construction Co., Inc.*, 126 B.R. 1005, 1012-1013 (Bankr.E.D.WI.1991). Applying such an analysis to this case highlights the reality that even assuming, for sake of argument, that the Committee could achieve some potential benefit from the proposed services of Bederson that are not redundant to the services of the Existing Committee Professionals and the professionals employed by the Legal Representative, such benefit would be offset severely by the expense to the estate of hiring Bederson. This would not be in the best interest of the estate nor the pool of creditors in this chapter 11 case and, accordingly, the Application should be denied. See *In re Wang Laboratories, Inc.*, 143 B.R. 794 (Bankr.D.Mass 1992) (denying retention application for financial consultants when services of such financial consultants would merely duplicate services of legal counsel and accountants already employed by debtor).

Conclusion

The Committee's retention of yet another professional to conduct an analysis that is duplicative of that which is currently being conducted by the Legal Representative and which Parente, an Existing Committee Professional, is fully capable of conducting, is cause for concern. This chapter 11 case is relatively small, and not necessarily very complex, in nature. The employment of a third Committee-retained professional in connection with a case of this size is unreasonable and will serve only to saddle the estate with an additional financial burden with no corresponding benefit. Accordingly, the Court should deny the Application.

WHEREFORE, Mestek respectfully requests that this Court (i) deny the Application and (ii) grant such other relief as it deems just and proper.

Dated: November 14, 2003

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