

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
)
MET-COIL SYSTEMS CORPORATION,)
) Chapter 11
Debtor.)
) Case No. 03-12676

**MESTEK, INC.’S LIMITED OBJECTION TO
DEBTOR’S MOTION TO ASSUME SETTLEMENT AGREEMENT WITH
TRAVELERS CASUALTY AND INSURANCE COMPANY**

Mestek, Inc. (“Mestek”), by its attorneys, Greenberg Traurig, LLP, submits this limited objection to the Debtor’s Motion to Assume Settlement Agreement, or in the Alternative, to Approve Settlement Agreement Pursuant to Bankruptcy Rule 9019 (“Motion”). The Debtor’s Motion should be granted *only* with respect to the settlement agreed to between the Debtor and Travelers. The remaining provisions of the Settlement Agreement, which attempt to impose obligations upon Mestek, must be rejected because Mestek cannot be forced to enter into a settlement agreement to which it did not and does not agree.

BACKGROUND

I. Procedural History.

The Debtor owns a division formerly known as the Lockformer Company (“Lockformer”), which operated a manufacturing plant in Lisle, Illinois. Mestek is the Debtor’s indirect parent corporation, pursuant to a recent merger. Prior to the Debtor taking over Lockformer’s operations at the Lisle facility, environmental contaminants allegedly were spilled and/or leaked onto the property. This alleged contamination spawned a series of lawsuits by residents surrounding the Lisle facility claiming personal

injury and property damage. The Debtor has paid over \$30 million to settle some of these lawsuits. The continued threat of lawsuits contributed to the Debtor's decision to file its chapter 11 petition on August 26, 2003.

Travelers Casualty and Surety Company and the Travelers Indemnity Company of Illinois (collectively, "Travelers") issued certain general liability insurance policies to the Debtor.¹ Mestek, the Debtor, and Travelers dispute the extent of the Debtor's insurance coverage for those environmental contamination lawsuits under these policies. In February 2001, Mestek and the Debtor filed suit against Travelers in the state court of DuPage County, Illinois seeking a declaration of Travelers' coverage obligations for these suits and any related liabilities under the policies ("Illinois Coverage Action"). After Travelers unsuccessfully moved to dismiss the Illinois Coverage Action, it filed a similar declaratory action in the state court of Linn County, Iowa ("Iowa Coverage Action").² These actions were recently removed to the federal district courts in the Northern District of Illinois and the Northern District of Iowa, respectively.

In the Illinois Coverage Action, on November 6, 2003, Judge Amy St. Eve in the United States District Court for the Northern District of Illinois granted Travelers' Motion for Referral to Bankruptcy Judge, and the parties are awaiting re-assignment of

¹ The applicable policies are: Umbrella Liability Policy No. 7SFJCUP-202T257-2-89 covering the period October 26, 1989-October 26, 1990; Self Insured Excess Products Complete Operations Liability Policy No. 7J-PLSI-239T9105-TIL-95 covering the period October 26, 1995-October 26, 1996; Catastrophe Umbrella Policy No. 7SFJ-CUP-266T094-A-TIL-96 covering the period October 26, 1996-October 26, 1997; Commercial General Liability Policy No. 7J-RAGL-264T792-8-TIL-96 covering the period October 26, 1996-October 26, 1997; Commercial Excess Liability (Umbrella) Insurance Policy No. 7SFJ-CUP-266T094-A-TIL-97 covering the period October 26, 1997-October 26, 1998; Commercial General Liability Policy No. 7J-RAGL-264T792-8-TIL-97 covering the period October 26, 1997-October 26, 1998; Commercial General Liability Policy No. 7J-RAGL-264T792-8-TIL-98 covering the period October 26, 1998-October 26, 1999.

² The Illinois Coverage Action and the Iowa Coverage Action are referred to collectively herein as the "Coverage Actions."

that case to a judge in the United States Bankruptcy Court for the Northern District of Illinois. In the Iowa Coverage Action, Travelers filed a similar Motion for Case Referral to Bankruptcy Judge (in the United States Bankruptcy Court for the Northern District of Iowa), and that motion is currently pending. Travelers has filed Motions for Abstention and Remand in each of the Coverage Actions, claiming that the enforceability of the Settlement Agreement must be determined by the respective state courts in Iowa and Illinois. Mestek understands that the Debtor intends to file motions to transfer both of the Coverage Actions to this Court.

II. The Debtor's Negotiation And Settlement With Travelers.

Beginning in December 2002, representatives of Mestek, the Debtor, and Travelers engaged in a series of meetings to discuss settlement of the Coverage Actions. On April 11, 2003, Travelers sent the Debtor a "Settlement Term Letter" that delineated the "principal terms of settlement." The Debtor responded to this letter by another letter dated April 23, 2003, that "confirm[ed] that [*the Debtor*] is willing to accept the following principal terms of settlement." On June 5, 2003, Travelers forwarded a "Proposed Settlement Confidential Agreement and Release" to the Debtor. After several discussions regarding modification of the settlement agreement, Travelers' counsel prepared a second draft settlement agreement on July 16, 2003 ("Settlement Agreement").³ This agreement is the subject of the Debtor's present Motion.

The Debtor filed for chapter 11 bankruptcy protection on August 26, 2003. Since that date, Travelers has filed motions in the Coverage Actions seeking to enforce the Settlement Agreement against Mestek. Now, the Debtor has moved to assume the Settlement Agreement as either an executory contract pursuant to 11 U.S.C. § 365

³ The Settlement Agreement was submitted under seal in support of the Debtor's Motion as Exhibit A.

("Bankruptcy Code § 365") or an approved compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 ("Bankruptcy Rule 9019"). Although Travelers has filed a motion asking this Court to defer ruling on the Debtor's Motion pending procedural rulings in the Coverage Actions, both Travelers and the Debtor have argued in pleadings to the various courts involved that they believe the Settlement Agreement is a binding and enforceable contract.

The Debtor is well within its rights to bring this Motion requesting this Court's approval of the Settlement Agreement. Mestek does not object to a settlement between Travelers and the Debtor. Mestek's only objection to the Motion is to the implication that *Mestek* entered into any settlement agreement with Travelers. Neither the Debtor nor this Court can bind Mestek to such an agreement or impose any obligations on Mestek. Thus, the Motion must be limited to the agreement reached between Travelers and the Debtor, in which Travelers agreed to pay a specified sum to the Debtor in exchange for, *inter alia*, a release.

ARGUMENT

The Debtor asserts two bases for its Motion: 1) it should be authorized to assume the Settlement Agreement pursuant to Section 365 of the Bankruptcy Code; or 2) it should be authorized to enter into a settlement with Travelers pursuant to Bankruptcy Rule 9019. (*See* Motion ¶ 9) This Court may approve a settlement between the Debtor and Travelers only, but there is no basis for this Court to approve a settlement that is binding upon *Mestek*. Because the Settlement Agreement generally meets the criteria set forth in Bankruptcy Rule 9019 as being in the paramount interest of the estate's creditors, the Motion should be approved on a limited basis – the Debtor and Travelers should enter

into the settlement reached between them. There is no basis upon which to bind Mestek to any settlement.

I. The Agreement Must Be Limited To Travelers And The Debtor, And Cannot Impose Any Obligations On Mestek.

The Debtor urges this Court to approve the Settlement Agreement *in toto* and asserts that it is binding on Travelers, the Debtor, and Mestek. (*See* Motion ¶ 7) Actually, the Settlement Agreement is comprised of several separate agreements regarding payment and releases. Where an instrument contains several separate and distinct agreements, the Debtor may choose to assume or reject some or all of the agreements. *See Indian River Homes, Inc. v. Sussex Trust Co. (In re Indian Rivers Homes, Inc.)*, 108 B.R. 46, 49 (D. Del. 1989) (separately rejecting commissions provision in sale agreement); *see also* 9C AM. JUR. 2d *Bankruptcy* § 2159 (2003) (noting that debtor may choose to assume some or all agreements contained in a single instrument). As neither the Debtor nor this Court can impose obligations on Mestek, a third party, by assumption of this agreement, only those portions of the Settlement Agreement that obligate the Debtor can be assumed and approved.

A. The Debtor Cannot Impose Obligations on Mestek by Assuming the Settlement Agreement.

There are basically three “agreements” contained in the Settlement Agreement: 1) Travelers agreed to pay the Debtor for certain disputed coverage amounts (*See* Settl. Ag., § 3); 2) the Debtor agreed to release Travelers from the present litigation and any future liabilities (*See id.*, §§ 4, 5); and 3) the Debtor agreed to additional obligations toward Travelers. (*See id.*, §§ 6, 7) A debtor’s assumption or termination of an agreement that also involves a non-debtor third party does not affect the third party’s obligations under

the agreement. *See Tebo v. Elephant Bar Restaurant, Inc. (In re Elephant Bar Restaurant, Inc.)*, 195 B.R. 353, 356 (Bankr. W.D. Pa. 1996). That is, a debtor cannot, by assuming a contract, impose or extinguish a third party's rights or obligations under the contract. *See id.* Thus, the Debtor here is free to assume its own rights and obligations under the Settlement Agreement, *i.e.*, its right to receive payment from Travelers and its obligation to release Travelers. But it cannot assume that portion of the Settlement Agreement that requires Mestek to undertake any obligations toward Travelers. Accordingly, the Debtor can only assume the portions of the Settlement Agreement that are binding upon it.

B. Mestek Did Not Agree to the Settlement Agreement.

Although Mestek is referenced in the Settlement Agreement, it never executed it. Nor is there any indication that Mestek ever proposed, negotiated, or agreed to the terms set forth in the Settlement Agreement. All of the correspondence leading up to the Settlement Agreement solely referenced the Debtor as the settling party. In fact, Mestek has opposed all attempts by Travelers, in the Coverage Actions, and by the Debtor, here, to bind Mestek to the Settlement Agreement. As indicated by their filings before this Court and the courts hearing the Coverage Actions, Travelers and the Debtor are the only parties who believe they have agreed to a settlement. Thus, the only "settlement agreement" to be assumed exists between the Debtor and Travelers, and not Mestek.

II. A Limited Settlement Is In The Best Interests Of The Estate, And Should Be Approved Pursuant To Bankruptcy Rule 9019.

The Debtor argues, in the alternative, that the Settlement Agreement should be approved as a compromise or settlement pursuant to Bankruptcy Rule 9019. Before approving a proposed settlement under this rule, however, the Court must consider four

criteria: 1) the probability of success in litigation; 2) the likelihood of difficulty in collection; 3) the complexity of the underlying litigation and the delay, expense, or inconvenience likely to arise while pursuing it; and 4) the paramount interest of the creditors. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3rd Cir. 1996). Generally, this Court should defer to the Debtor's judgment in entering into a settlement. *See id.* at 395. Unless the proposal "falls below the lowest point in the range of reasonableness," it should be approved. *See In re Nationwide Sports Distrib., Inc.*, 227 B.R. 455, 460 (Bankr. E.D. Pa. 1998) (citations omitted). The Settlement Agreement, as limited to Travelers and the Debtor *only*, meets the four criteria set forth in *Martin*, and thus, should be approved pursuant to Rule 9019.

Addressing the first, second, and third *Martin* criteria, the outcome of the Coverage Actions, as in any litigation, is uncertain. Both matters are in the pleading stages and no dispositive motions have been filed or ruled upon. While there is little concern that Travelers will become insolvent such that the Debtor would not be able to collect policy proceeds in the future, the Debtor is correct, however, that the issues involved here are complex. (*See* Motion ¶ 14) Litigation involving this coverage dispute is likely to be expensive and protracted. (*See id.*) As compromises of disputed claims are favored in bankruptcy, settlement of the Debtor's coverage dispute with Travelers should also be favored by this Court. *See Martin*, 91 F.3d at 393 (citing 9 *Collier on Bankruptcy* ¶ 9019.03[1] (15th ed. 1993)).

Applying the fourth *Martin* factor, this settlement is in the paramount interest of Debtor's creditors. The insurance policies at issue here and their proceeds are property of the Debtor's estate. *See In re Jasmine, Ltd.*, 258 B.R. 119, 128 (D.N.J. 2000). To reject

this settlement outright would deprive the Debtor of an important asset of the estate and unnecessarily drain the estate's resources while this Court determined whether the agreement in its present form was enforceable. *See id.* at 127. Instead, under a limited Settlement Agreement, the Debtor's estate would receive significant payment from Travelers in return for releasing Travelers from future claims. (*See* Settl. Ag., § 6) This will ultimately increase the amount that will be available to creditors. Continued litigation of the Coverage Actions would only deplete the estate's assets to the detriment of the creditors. *See In re Mavrode*, 205 B.R. 716, 721 (Bankr. D.N.J. 1997) (approving settlement to be paid from outside source in exchange for dismissal of litigation against estate).

In sum, the settlement agreement between Travelers and the Debtor meets all of the *Martin* factors. As well stated by the Debtor, "Travelers has indicated a preference for the Settlement Agreement rather than the protection of a plan of reorganization." (*See* Motion ¶ 8) As long as this settlement is limited to those parties in agreement -- Travelers and the Debtor -- then Travelers' preference should be accommodated and the settlement should be approved.

CONCLUSION

Mestek does not object to any settlement between Travelers and the Debtor. It only objects to any attempt by Travelers and/or the Debtor to bind Mestek to any settlement, release, or other obligation via this Motion. Because settlement of this dispute is generally in the best interest of the Debtor's estate, this Court should limit its approval of the Motion to only that agreement existing between Travelers and the Debtor.

WHEREFORE, for the reasons set forth above and for such other and further reasons as may appear to the Court, Mestek, Inc. respectfully requests that this Court enter the following order:

- 1) approving the settlement between Travelers and the Debtor;
- 2) ordering Travelers to pay the amount set forth in the Settlement Agreement to the Debtor's estate;
- 3) releasing Travelers from all claims by or against the Debtor; and
- 4) awarding any and all other relief as it deems necessary and just.

Dated: November 26, 2003

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