

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

IN RE:)	Chapter 11
)	
MET-COIL SYSTEMS CORPORATION,)	No. 03-12676 (MFW)
)	
Debtor.)	Objection Deadline: 12/3/03 (Dk. # 244)
)	Objection Deadline: 12/5/03 (Dk. # 293)
)	Hearing Date: 12/10/03
)	Hearing Time: 10:30 a.m.

OBJECTION OF DEVANE AND PERSONAL INJURY CLAIMANTS TO (I) THE ADEQUACY OF THE DISCLOSURE STATEMENT TO THE DEBTOR'S AND MESTEK, INC.'S JOINT PLAN OF REORGANIZATION (DOCKET # 244) AND (II) THE DEBTOR'S MOTION FOR ENTRY OF AN ORDER (A) APPROVING PROCEDURES FOR THE CONSIDERATION OF ALTERNATIVE PLAN PROPOSALS AND THE SELECTION OF A WINNING PLAN SPONSOR AND (B) APPROVING FORM AND NOTICE OF ALTERNATIVE PLAN PROCEDURES (DOCKET # 293)

Michael Kenny, Laura Wroble, Denise Ann Ehrhart, Virginia Hallmer, Deborah Meyer, as Executrix of the Estate of Nicholas Meyer, Deceased; and Deborah Meyer Individually, and as Mother and Next Friend of Derek Meyer, a Minor, and Danielle Meyer, a Minor, Daniel Pelzer, Sally Pepping, Karen Mulacek, Richard Kuta, Jane Kuta, Michael Papadopolous, Thomas Frantik and Barbara Frantik, Jeanette Devane, Lee Herrera, and Andrew Wroble (collectively, "Claimants"), by and through their counsel, hereby object to the (i) adequacy of the Disclosure Statement to the Debtor's and Mestek's Inc's Joint Plan Of Reorganization ("Disclosure Statement") and (ii) the proposed overbid protection provided to Mestek pursuant to the Joint Plan of Reorganization (the "Joint Plan") and the Debtor's Motion for Entry of an Order (A) Approving Procedures for the Consideration of Alternative Plan Proposals and the Selection of a Winning Plan Sponsor and (B) Approving Form and Notice of Alternative Plan Procedures

(Docket # 293) (the “Procedure Motion”). For the reasons set forth below, the Disclosure Statement should not be approved because it fails to provide adequate information regarding (a) the Unsecured Claims Distribution Fund (the “UCDF”), (b) the TCE Trust and Trust Agreement, (c) the actual amount of “new value” proposed to be paid or assumed by Mestek, (d) the value of the insurance rights proposed to be assigned to Mestek, (e) the proposed procedure by which contested property damage and personal injury/wrongful death claims will be resolved, (f) the amount of funds that will be placed in the TCE Trust and UCDF and (g) the estimated distribution to various classes of creditors, including Claimants. In addition, a similar lack of information makes it inappropriate to approve the overbid protection being offered to the Debtor’s parent company, Mestek, under the Joint Plan and Procedure Motion. In support of this objection, Claimants state as follows:

Introduction

1. On August 26, 2003 (the “Petition Date”), Met-Coil Systems Corporation (the “Debtor”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

2. Claimants hold substantial property damage or personal injury/wrongful death claims against the Debtor. Claimants also contend that Mestek, Inc. (“Mestek”), the Debtor’s parent company is liable for these claims.

3. On November 5, 2003, the Debtor and Mestek filed their Joint Plan and the Disclosure Statement.

Argument

4. The Disclosure Statement may only be approved if this Court determines that it contains adequate information for claimholders to make an informed judgment about the Plan.

See, 11 U.S.C. § 1125. A disclosure statement's use of conclusory opinions without supporting facts is not an acceptable means of providing adequate information in accordance with 11 U.S.C. § 1125. See, *In re Ligon*, 50 B.R. 127, 130 (Bankr. N.D. Tenn. 1985); *In re Egan*, 33 B.R. 672, 675 (Bankr. N.D. Ill. 1983); see also, *In re Metrocraft*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984). Moreover, if the Joint Plan cannot be confirmed, the Disclosure Statement should not be approved in any event. See, *In re Curtis Center Ltd.*, 195 B.R. 631, 637 (Bankr. E.D. Pa. 1996); *In re Bjolmes Realty Trust*, 134 B.R. 1000, 1001 (Bankr. D. Mass. 1991); *In re Unichem Corp.*, 72 B.R. 95, 97 (Bankr. N.D. Ill.), *aff'd*, 80 B.R. 448 (N.D. Ill. 1987). Consequently, in order to approve the Disclosure Statement as containing adequate information, this Court must also consider whether the Plan contains any patent defects that bar confirmation if not remedied. See, *id.*

5. The Disclosure Statement does not contain, as required by 11 U.S.C. § 1125, adequate information that would enable interested parties to make an informed judgment about the Joint Plan for voting purposes. Specifically, the Disclosure Statement does not adequately describe: (a) the UCDF, (b) the TCE Trust and Trust Agreement, (c) the actual amount of "new value" proposed to be paid or assumed by Mestek, (d) the value of the insurance rights proposed to be assigned to Mestek, (e) the proposed procedure by which contested property damage and personal injury/wrongful death claims will be resolved, (f) the amount of funds that will be placed in the TCE Trust and UCDF and (g) the estimated distributions to various classes of creditors.

6. The majority of the Disclosure Statement's adequacy failures arise directly from the Joint Plan proponents not yet having provided Claimants, or apparently any other party, with

the applicable TCE Trust Agreement, which agreement is a fundamental component of the Joint Plan, the absence of which renders the Joint Plan unconfirmable. On information and belief, the yet to be presented Trust Agreement will address funding of the TCE Trust, the proposed procedure for resolution of disputed claims identified as being paid from the TCE Trust and the TCE Trust mechanism itself.¹ However, the Trust Agreement was not filed with the Joint Plan, and apparently the terms of the Trust Agreement have not yet been agreed upon. As such, the Disclosure Statement does not and can not adequately disclose information regarding this fundamental (yet, missing) element of the Joint Plan, and interested parties have not been provided with adequate information and therefore can not make an informed decision regarding the Joint Plan. This is especially so for Class 6.2 Claimants who have specific resolution rights arising out of their type of claims, but who are currently unable to ascertain whether those rights will be preserved.

7. In addition, the Disclosure Statement also fails to set forth estimated claim amounts for many classes of claims, including those for Administrative and Priority Tax Claims, as well as Class 1 Claims (Non-tax priority), Class 2 Claims (DIP Claims), Class 3.2 Claims (Mestek Prepetition Secured Claims), Class 4.1 Claims (General Unsecured Claims), Class 4.3 Claims (Mestek Secured Claims) and Class 4.4 Claims (Honeywell Claims). Not surprisingly, estimated distributions are also not set forth for many of these Classes, including Class 4.4

¹ If the Trust Agreement does not address these issues, they still would need to be properly addressed and their omission would give rise to additional adequacy of Disclosure Statement and/or confirmation of the Joint Plan issues.

Claims, and the various Classes encompassing property damage and/or personal injury/wrongful death claims.

8. The Disclosure Statement also fails to set forth the amount of funding that Mestek is obligated to provide under the Joint Plan. Rather, the Disclosure Statement vaguely sets forth that Mestek will (a) fund or assume responsibility for (i) the distributions on account of Class 5.1 and 6.1 Claims (in the aggregate, \$18.5 million), (ii) any distributions on account of Class 5.2 and 6.2 Claims (currently unknown), (iii) up to \$3 million of environmental liabilities of the Debtor, (iv) the cost of the Mejdrech hookups (currently unknown or undisclosed) and (b) fund (i) an undisclosed amount to the TCE Trust, (ii) an undisclosed amount to the UCDF and (iii) an undisclosed amount necessary to adequately capitalize the Reorganized Debtor. This inadequacy prevents Claimants from being able to reasonably determine whether the Reorganized Debtor, TCE Trust and UCDF will be adequately funded, and what monies, if any, will be available for distribution on their claims.

9. Furthermore, the Disclosure Statement fails to adequately disclose information regarding the value of the insurance rights proposed to be assigned to Mestek under the terms of the Joint Plan. This deficiency compounds the Disclosure Statement's failure to adequately explain what Mestek's actual financial contribution is under the Joint Plan and further precludes Claimants from determining what value is actually being provided by Mestek under the terms of the Joint Plan.

10. The inadequacy of the information provided in the Disclosure Statement regarding the amount being funded or assumed by Mestek is also exacerbated by the uncertainty as to whether Mestek and the Debtor will reach an agreement with Honeywell regarding Honeywell's

participation in the Plan. As such, while the Disclosure Statement states that Honeywell will be required to contribute monies towards obligations due to creditors under the Joint Plan in order to enjoy any protections it may be entitled to, there is no indication as to the amount of any such contribution. Nor is there any explanation as to whether such a contribution would be in addition to, or in lieu of, those contributions of unknown amounts currently supposed to be made by Mestek.

11. Finally, the failure of the Disclosure Statement to adequately set forth information on (a) the amounts Mestek is obligated to pay under the Joint Plan, (b) the amount of the claims Mestek is waiving under the Joint Plan (and what the value of any unsecured portion of such claims would be), (c) whether any Honeywell contribution would be in addition to, or in lieu of part of, the Mestek Contributions and (d) the potential value of the insurance rights proposed to be assigned to Mestek under the Joint Plan is mirrored in the Procedures Motion. As such, and despite the Debtor's unsupported assertion at paragraph 13 thereof that the total amount of Mestek's contribution will total at least \$37 million, there is no way in which interested parties or the Court can assess whether the requested \$4 million dollar overbid protection for Mestek is reasonable under the circumstances, including, but not limited to, the fact that Mestek is the parent company of the Debtor.

12. Some of the above-described deficiencies arise from missing fundamental elements of the Joint Plan, such as the Trust Agreement or whether there will be a Honeywell settlement. Other of the above-described deficiencies arise from the Disclosure Statement's failure to adequately disclose significant components of the Joint Plan, such as estimated claim treatment, TCE Trust and UCDF Funding and Mestek payment and assumption obligations with

anything other than vague references. All of these deficiencies clearly indicate that the Disclosure Statement does not come close to providing Claimants with adequate information to make an informed judgment on the merits of the Plan.² Appropriate additions to both the Disclosure Statement and Plan must be made before it can be approved as containing adequate information under 11 U.S.C. § 1125.

Conclusion

WHEREFORE, Claimants respectfully requests that this Court enter an order: (i) disapproving the Disclosure Statement as containing inadequate information; (ii) denying the requested \$4,000,000 overbid protection and (iii) granting such other relief as is just and equitable under the circumstances.

Date: December 3, 2003

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and

² Moreover, once disclosed, this information may give rise to additional issues regarding the Disclosure Statement or Joint Plan.

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