

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: )  
)  
MET-COIL SYSTEMS CORPORATION, )  
) Chapter 11  
Debtor. )  
) Case No. 03-12676  
) Ref. Docket No. 262

**MESTEK, INC.'S OBJECTION TO TRAVELERS' MOTION TO DEFER RULING ON  
DEBTOR'S MOTION TO ASSUME SETTLEMENT AGREEMENT**

Mestek, Inc. ("Mestek"), by its attorneys, Greenberg Traurig, LLP, submits this objection to Travelers Casualty and Surety Company and the Travelers Indemnity Company of Illinois' (collectively, "Travelers") Motion to Defer Ruling on the Debtor's Motion to Assume Settlement, or in the Alternative, to Approve Settlement (the "Deferral Motion").

**Background**

At the core of this matter is a dispute between Travelers and Met-Coil Systems Corporation (the "Debtor") regarding insurance coverage for the numerous environmental liabilities that spurred the Debtor's chapter 11 filing. This dispute was the subject of two actions proceeding simultaneously in the Illinois and Iowa state courts to determine the extent of Travelers' defense and indemnification obligations to the Debtor (respectively, the "Illinois Coverage Action" and "Iowa Coverage Action," or collectively, the "Coverage Actions").<sup>1</sup> Mestek also sought coverage under these policies as a third party beneficiary. In April 2003, the Debtor and Travelers reached a mutually agreeable settlement of the claims each raised in the

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<sup>1</sup> Travelers represents that it first filed suit to resolve this dispute in the Iowa Coverage Action in February 2001 and that the Debtor and Mestek did not bring Travelers into the Illinois Coverage Action until June 2002. (*See* Deferral Motion ¶ 4) This distorts the facts. Travelers did not file the Iowa Coverage Action until January 2003, three months after it was brought into the Illinois Coverage Action as an additional defendant.

Coverage Actions. They exchanged a draft settlement agreement,<sup>2</sup> but were not able to execute it before the Debtor's chapter 11 filing in August 2003.

Travelers asserts that it reached a settlement with the Debtor *and Mestek*, however, Mestek did not agree to or accept the obligations set forth in the Settlement Agreement. Therefore, after the Debtor's chapter 11 filing, Travelers filed motions in the Coverage Actions to enforce the Settlement Agreement against Mestek only (as all matters against the Debtor were stayed). The Debtor then removed both Coverage Actions to their respective federal district courts in Illinois and Iowa. Travelers has filed motions in both Coverage Actions to have the matters referred to a bankruptcy court in each jurisdiction.<sup>3</sup> The Debtor is attempting to have both matters transferred to this Court for resolution.

Meanwhile, Travelers has moved the respective federal district courts now handling the Coverage Actions to abstain from hearing them and remand them to the appropriate state courts. The underlying theory of Travelers' motions is that the determination of the validity and enforceability of the Settlement Agreement against the Debtor and Mestek is neither a core matter of, nor related to, the Debtor's chapter 11 case and thus, cannot be decided by a bankruptcy court.<sup>4</sup>

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<sup>2</sup> The draft settlement agreement dated July 16, 2003 is the Settlement Agreement that Debtor seeks to assume in its motion. Mestek will also refer to that document as the "Settlement Agreement" herein.

<sup>3</sup> The District Court for the Northern District of Illinois has recently granted Travelers' request and the Illinois Coverage Action is now pending before the Honorable Susan Pierson Sonderby in the bankruptcy court of that district. The District Court for the Northern District of Iowa has not yet ruled on Travelers' motion for referral of the Iowa Coverage Action to the bankruptcy court.

<sup>4</sup> Travelers incorrectly represents that the District Court for the Northern District of Illinois has already ruled that it "must" hear Travelers' Motion for Abstention and Remand before hearing the Debtor's Motion to Transfer Venue (to this Court). (See Deferral Motion ¶ 2) Actually, at the presentment of the Debtor's Motion to Transfer Venue, Travelers informed the Illinois District Court that it wished to file a motion to remand. The Court then stated that if Travelers intended to file a motion for remand, it must be filed by October 28, 2003. Based on this representation, the Illinois District Court then stated that it would hear the motion for remand before ruling on the Motion to Transfer Venue. The Court did not make any substantive jurisdictional ruling that the Motion for Remand had to be heard first, and was not apprised that Travelers would also simultaneously file a motion seeking to have the case

The Debtor does not dispute that the Settlement Agreement is valid and enforceable. In fact, the Debtor is prepared to perform its obligations under the Settlement Agreement and has filed the Motion to Assume, pursuant to 11 U.S.C. § 365 (“Section 365”) or Rule 9019 of the Federal Rules of Bankruptcy Procedure (“Motion to Assume”). Neither does Mestek dispute the validity of the Settlement Agreement between Travelers and the Debtor. Mestek only disputes any attempt by Travelers or the Debtor to impose obligations from the Settlement Agreement upon it.

After failing to file a timely response to the Debtor’s Motion to Assume, Travelers now asks this Court to “defer” ruling on the Motion to Assume until its motions seeking abstention and remand are heard in the Coverage Actions. Travelers’ request is unfounded and unnecessary. This Court can make a determination regarding the validity and enforceability of the Settlement Agreement *against the Debtor*, in connection with the Motion to Assume. More importantly, this Court may hear and rule upon the Motion to Assume without affecting Travelers’ separate attempt to enforce the Settlement Agreement against Mestek in the Coverage Actions.

This Court must end Travelers’ endless attempts before now, seven (7) different courts in the last four months to avoid its obligations under an agreement that it proclaims, to all of these courts, is binding and enforceable. Travelers has filed eight (8) motions before these courts, including two before this Court to delay an undisputed payment it owes to the Debtor, and which would further the Debtor’s reorganization process. These machinations must end and Travelers’ latest delay tactic, its Deferral Motion, should be denied.

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referred to a bankruptcy judge. In fact, shortly thereafter, on November 6, 2003, the Illinois District Court granted Travelers’ motion for referral to a bankruptcy judge and struck all of the previously scheduled briefing and hearing dates.

## Argument

There is no provision in either the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure that allows a court to “defer” ruling. What Travelers is really seeking is a *stay* of the Debtor’s Motion to Assume until Travelers’ motions can be ruled upon by the courts in the Coverage Actions. Travelers argues that this “stay” is necessary because this Court cannot address the validity and enforceability of the Settlement Agreement against the Debtor and Mestek. Travelers’ premise is flawed:

*The issue of the existence and enforceability of the underlying contract are threshold issues the resolution of which is absolutely essential to the adjudication of the [Section 365] Motion.*

*In re III Enterprises V, Inc.*, 163 B.R. 453, 459 (Bankr. E.D. Pa. 1994) (emphasis added). This Court certainly can determine the validity of the Settlement Agreement in the context of the Motion to Assume. Thus, Travelers’ assertion that this Court lacks jurisdiction or otherwise cannot determine this issue is simply wrong. The Debtor’s Motion to Assume has placed the validity and performance of the Settlement Agreement, *as it relates to the Debtor*, squarely before this Court. This Court can rule on the Motion to Assume without addressing the validity of the Settlement Agreement as it relates to Mestek. There is no basis for the stay that Travelers is requesting and accordingly, its Deferral Motion must be denied.

### **I. This Court May Assert Core Jurisdiction Over The Motion To Assume And The Issues Related To It.**

Although Travelers does not explicitly assert that the enforceability of the Settlement Agreement is a non-core matter and thus outside the jurisdiction of the bankruptcy court in its Deferral Motion, that argument does appear in Travelers’ Preliminary Objection to the Debtor’s Motion to Assume. Interestingly, Travelers claims that the Settlement Agreement is “valid, binding and enforceable” (Deferral Motion ¶ 5), and has moved both the Iowa and Illinois

District Courts to refer the Coverage Actions to the bankruptcy courts (which referral has already occurred in the Illinois Coverage Action). Yet, Travelers has urged this Court and the district courts of Iowa and Illinois to find that none of them have jurisdiction to enforce this same “valid, binding and enforceable” agreement, because it is not a core matter in this chapter 11 proceeding.

Based on Travelers’ own actions,<sup>5</sup> its jurisdictional argument is factually disingenuous and legally baseless. The enforceability of the Settlement Agreement is a core matter within the jurisdiction of this Court as it involves the Debtor’s contract and the Debtor’s property (insurance policies). Mestek joins in and incorporates the arguments set forth in the Debtor’s Objection and Response to Travelers’ Deferral Motion and Travelers’ Objection to the Motion to Assume regarding this issue. Travelers’ Deferral Motion fails in light of these arguments.

**II. There is No Need to Defer Ruling As There is No Dispute Regarding The Enforceability Of The Settlement Agreement Between Travelers And The Debtor.**

Throughout its Deferral Motion, Travelers asserts that there is a question regarding the validity and enforceability of the Settlement Agreement between Travelers, the Debtor, and Mestek. (*See* Deferral Mot. ¶¶ 15, 19, 20) The Settlement Agreement is actually comprised of two separate and distinct agreements: one between Travelers and the Debtor settling the Coverage Actions and one allegedly between Travelers and Mestek regarding future obligations. There is no dispute regarding the enforceability and validity of the agreement *between Travelers and the Debtor*; both have represented in pleadings that they believe the Settlement Agreement

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<sup>5</sup> Notably, Travelers’ argument that these matters are not before the bankruptcy court contradicts its own actions. Travelers has filed motions in the Coverage Actions to have these matters referred to the bankruptcy courts of their respective districts as “related to” cases. Therefore, Travelers has already acknowledged that the bankruptcy court is the appropriate forum for this dispute and cannot argue otherwise here.

is a valid contract. Mestek is the only party that disputes the existence of an agreement that would impose future obligations on it.

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 determination of a Section 365 motion does not impose or extinguish any rights a third party may have under the agreement. Here, the Debtor 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. The Debtor's assumption of the Settlement Agreement does not bind Mestek to it, nor does it inhibit Travelers from attempting to bind Mestek thereto.

Travelers' argument confuses the issues. Travelers drafted the Settlement Agreement and chose to incorporate two separate and distinct agreements into a single instrument. The Debtor has already decided to parse out and assume its agreement with Travelers by filing the Motion to Assume. *See Indian River Homes, Inc. v. Sussex Trust Co. (In re Indian Rivers Homes, Inc.)*, 108 B.R. 46, 49 (D. Del. 1989); *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). Only the Debtor's agreement is before this Court on the Motion to Assume. This Court need not entangle the Debtor's agreement with Travelers with the more complicated dispute between Travelers and Mestek over their alleged agreement.

The Motion to Assume can and should be resolved so that the Debtor can obtain insurance proceeds critical to its the reorganization plan. To defer ruling on the Motion to Assume to address Travelers' dispute with Mestek would defeat the very purpose of this type of

summary proceeding. *See In re White Glove*, 1998 WL 731611 at \*4. Any third party could then use collateral litigation to stall a sale of assets, or the assumption, assignment, or rejection of a contract. *See id.* (“The potential of [collateral litigation] chilling the sale process ... is real.”) While Travelers claims that Mestek is trying to avoid its alleged obligations under the Settlement Agreement, it actually appears as though Travelers is the one avoiding its obligations. Travelers avoids paying the Debtor pursuant to an agreement that Travelers *admits* is valid, binding, and enforceable, by attempting to delay enforcement of that agreement. This attempt to deprive the Debtor of amounts that are indisputably due must be denied.

### **III. This Court Can Address The Validity Of The Settlement Agreement In The Context Of The Motion To Assume.**

Even if this Court does not find that there are two agreements contained in the Settlement Agreement that can be separately enforced, it may still rule upon the enforceability of the Settlement Agreement in connection with the Motion to Assume. Travelers relies heavily on *Orion Pictures Corp. v. Showtime Networks, Inc.*, 4 F.3d 1095, 1099 (2<sup>nd</sup> Cir. 1993), for the proposition that a bankruptcy court cannot resolve an issue of contract validity as part of a motion to assume or reject an executory contract Section 365. (*See* Mot. ¶¶ 16-17) *Orion*, a holding from the Second Circuit, is not binding on this Court and, according to other courts in this Circuit, offers little persuasive authority. Contrary to Travelers’ assertion, the Third Circuit has *not* followed *Orion*. In fact, the very case Travelers cites as following *Orion* actually cites it as contrasting authority. *See In re III Enterprises*, 163 B.R. at 459 n.4 (“The instant situation *contrasts* with that of [*Orion*].”) (emphasis added).

In *III Enterprises*, the bankruptcy court, presented with a Section 365 motion to reject a contract, analyzed and made a final determination that no valid contract existed for the Debtor to assume or reject. *See id.* at 467. The court implicitly rejected the *Orion* holding, stating: “**We**

*cannot accept [the] argument ... that it is somehow inappropriate for us to consider the issue of whether the parties had a valid, enforceable contract in deciding the Motion.”* *Id.* at 459 (emphasis added). Other courts in this Circuit have similarly refused to follow *Orion* and have addressed contract validity issues in the context of administrative motions. *See, e.g., In re White Glove*, Nos. 98-12493DWS, 98-12494DWS, 1998 WL 731611 at \*4 (Bankr. E.D. Pa. 1998) (resolving request for reformation of contract in context of motion to assume and assign contract).

*III Enterprises* addressed a factual and procedural history virtually identical to that at issue here. In that case, Pueblo, a party to a contract with the debtor, had filed a declaratory action in Delaware chancery court regarding the existence and enforceability of the contract. *See III Enterprises*, 163 B.R. at 458. Similarly here, the Coverage Actions were pending in state court prior to the Debtor’s chapter 11 filing. As in *III Enterprises*, the Debtor here filed for bankruptcy, removed the Coverage Actions to the respective federal courts pursuant to 28 U.S.C. § 1452, and then moved to transfer the actions to the bankruptcy court where the Debtor’s proceeding was pending. *See id.* at 458 n.2. As did Pueblo in *III Enterprises*, Travelers has filed a motion with the district courts of Illinois and Iowa to abstain and remand the Coverage Actions. *See id.* The only procedural difference from the *III Enterprises* case is that there, the debtor moved to reject the contract, while here the Debtor moves to assume it. *See id.* at 458. But the context of the motion and the application of Section 365 remains the same.

The *III Enterprises* court found that its determination of the validity of the contract was a “threshold issue” to the motion to reject. *See id.* at 459. It did not defer ruling on that issue to a state court or other federal court before ruling on the motion to reject. Rather, the court held that its resolution of that issue was “absolutely essential” to adjudicating the motion. *Id.* In



accordance with *III Enterprises*, this Court should not defer ruling on the validity and enforceability of the Settlement Agreement, but should address it as an integral component of the Debtor's Motion to Assume.

Bankruptcy courts are often asked to determine issues of contract formation and interpretation. Generally, when presented with a Section 365 motion, a bankruptcy court must determine if a default or breach has taken place. *See* 11 U.S.C. § 365(b)(1); *see also Georgia Ports Authority v. Diamond Mfg. Co., Inc. (In re Diamond Mfg. Co., Inc.)*, 164 B.R. 189, 202 (Bankr. S.D. Ga. 1994) (finding that bankruptcy court's determination of defaults is res judicata as to separate claim for breach of contract). A bankruptcy court may also be required to interpret agreements in order to prioritize claims. *See Resolution Trust Corp. v. Best Prods. Co., Inc. (In re Best Prods. Co., Inc.)*, 68 F.3d 26, 31 (2<sup>nd</sup> Cir. 1995) (affirming bankruptcy court's interpretation of subordination agreement as core matter). Bankruptcy courts are also asked to interpret agreements to determine which assets comprise property of the estate. *See In re PSINet, Inc.*, 271 B.R. 1, 36 (Bankr. S.D.N.Y. 2001) (finding determination of whether equipment agreement created a lease or security interest to be core matter within bankruptcy court's jurisdiction). The existence of an underlying contract is a threshold issue that a bankruptcy court must decide in the context of a Section 365 Motion. Accordingly, it is appropriate for this Court to rule upon the validity and enforceability of the Settlement Agreement as part of the Debtor's Motion to Assume.

### **Conclusion**

It is well within this Court's jurisdiction under Section 365 to determine the validity and enforceability of the Settlement Agreement, as it relates to the Debtor's obligations. This determination, in the context of the Motion to Assume, will not and cannot affect any agreement

alleged between Travelers and Mestek. This Court need not wait for a ruling from another federal court or another state court that is, at best, several months away before hearing the Motion to Assume. The Debtor's reorganization process must proceed, including its assumption of the Settlement Agreement. Travelers' Deferral Motion should not further delay this process. Travelers should be ordered to pay the agreed-upon settlement amount to the Debtor now. It cannot hide behind the dispute with Mestek, which can be decided at a later date by this Court, or if this Court so finds, by the appropriate Illinois or Iowa court.

For all of these reasons, and for such other and further reasons as may appear to the Court at a hearing on this matter, Mestek, Inc., respectfully requests that this Court: (1) deny Travelers' Motion to Defer Ruling on the Debtor's Motion to Assume the Settlement Agreement or in the Alternative, Approve Settlement Pursuant to Rule 9019; (2) enter an order approving the Debtor's Motion to Assume the Settlement Agreement, as scheduled on December 10, 2003; and (3) award any and all other relief as it deems necessary and just.

Dated: December 3, 2003

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