

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

<p>In re: MET-COIL SYSTEMS CORPORATION, Debtor.</p>	<p>Chapter 11 Case No. 03-12676 (MFW) Hearing Date: Dec. 10, 2003 @ 10:30 a.m. Objection Date: Dec. 3, 2003 @ 4:00 p.m.</p>
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**TRAVELERS' OBJECTIONS TO DEBTOR'S DISCLOSURE
STATEMENT REGARDING PROPOSED PLAN OF
REORGANIZATION FOR MET-COIL SYSTEMS CORPORATION**

Travelers Casualty and Surety Company, formerly known as The Aetna Casualty and Surety Company, and The Travelers Indemnity Company of Illinois (collectively "Travelers"), object to Debtor's Disclosure Statement Regarding Proposed Plan of Reorganization for Met-Coil Systems Corporation ("Disclosure Statement"), because it lacks adequate information as required by § 1125 of the United States Bankruptcy Code and it is otherwise misleading.

INTRODUCTION

Travelers, Debtor and Mestek, Inc. ("Mestek"), Debtor's parent corporation and Plan proponent, have engaged in insurance coverage litigation in Iowa state court (the "Iowa Action") and Illinois state court (the "Illinois Action") for more than a year relating to coverage for Debtor's alleged environmental liabilities. The coverage litigation revolves around the parties rights and obligations under several pre-petition general liability insurance policies that Travelers issued to Debtor (the "Travelers Policies"). On April 28, 2003, Travelers, Debtor and Mestek settled their insurance coverage dispute before Debtor filed for bankruptcy, although a settlement was not signed before the filing.

Pursuant to the three-party settlement, Travelers agreed to pay Debtor and Mestek a

significant amount of money under the insurance contracts that Travelers entered into with Debtor (the "Travelers Policies"), and Debtor and Mestek agreed to certain indemnification obligations. Debtor and Mestek assert that the settlement is "significant" and "critical" to Debtor's reorganization. See Disclosure Statement Section VI(E)(4). Although Mestek serves as a Plan proponent, Mestek somehow disputes the settlement and in particular, its obligations thereunder. See Mestek's Limited Objection to Debtor's Motion to Assume Settlement Agreement. Thus, there is a chance that the coverage litigation between Travelers, Debtor and Mestek will be re-initiated, should the settlement be deemed invalid and unenforceable.

Travelers filed a pre-petition Motion to Enforce Settlement in the Illinois Action. Rather than awaiting adjudication of the Motions to Enforce Settlement, which was scheduled for November of 2003, on October 14, 2003, Debtor removed the Iowa Action and the Illinois Action to United States District Court for the Northern District of Iowa and the United States District Court for the Northern District of Illinois, respectively. Debtor then sought a transfer of the contract dispute to this Court on October 17, 2003, and on October 20, 2003, Debtor filed a Motion to Assume Settlement, or in the Alternative, to Approve Settlement ("Motion to Assume or Approve") in this Court.

Travelers disagrees with Debtor's assertion that this Court is the appropriate forum for resolving the disputed state law contract issues. Thus, Travelers has sought deferral of Debtor's Motion to Assume or Approve, and on October 28, 2003, it filed Motions for Abstention and Remand in the Illinois Action and Iowa Action pursuant to 28 U.S.C. § 1334(c)(1)(discretionary abstention); 28 U.S.C. § 1334(c)(2)(mandatory abstention); 28 U.S.C. § 1452(b)(remand). The United States District Judge in the Illinois Action expressly ruled that Travelers' Motion for Abstention and Remand will be adjudicated prior to Debtor's Motion to Transfer. Travelers'

Motions for Abstention and Remand, which are currently pending, have yet to be adjudicated, and this Court has yet to address Travelers' Motion to Defer Ruling or Debtor's Motion to Assume or Approve.

In spite of the fact that significant issues remain unresolved as to the settlement between Travelers, Debtor and Mestek, Debtor and Mestek downplay such disputes in the Disclosure Statement. Indeed, the Disclosure Statement makes no mention whatsoever of Travelers' Motion to Defer Ruling, and it only mentions Travelers' Motions for Abstention and Remand in passing. Likewise, the Disclosure Statement fails to even consider the possibility that the settlement may be held unenforceable, or how such a determination will affect Debtor's Plan. Moreover, the Disclosure Statement does not even attempt to explain why the disputed contract issues cannot and should not be resolved in state court, where they were originally scheduled for resolution in November of 2003.

As to the insurance coverage issues between Travelers, Debtor and Mestek, the Disclosure Statement fails to adequately disclose the nature of the disputes and whether the Plan is consistent with the parties' rights and obligations under the Travelers Policies. In particular, the Travelers Policies give Travelers the right and duty to defend covered lawsuits, and they give Travelers the right to investigate, negotiate and settle claims or suits. In fact, Travelers participated in the defense of certain underlying suits against Debtor. Further, the Travelers Policies expressly require Debtor's cooperation, and they prohibit Debtor from entering into any settlements without Travelers' approval. The Travelers Policies also prohibit the assignment of the policies without Travelers' consent. As detailed below, certain Plan provisions appear to violate some or all of these rights, yet the Disclosure Statement fails to disclose the risk that the Plan, if implemented, could violate Travelers' contractual rights.

Aside from the failures to disclose the issues specific to Travelers, Debtor and Mestek, the Disclosure Statement is materially incomplete because it does not attach the Trust Agreement, Trust Distribution Procedures and other key documents. Thus, the Disclosure Statement fails to provide adequate information as to (among other matters) how Claims will be liquidated and valued, thereby depriving interested parties of crucial disclosure concerning resolution of Claims. For instance, the Disclosure Statement does not specify whether all future claims, including those asserted by governmental entities or those arising from further migration of alleged contamination, are subject to the Plan's injunctions. In addition, as described more fully below, the Disclosure Statement fails to provide other information that is material to an interested party making an informed judgment about the Plan. Therefore, the Court should not approve the Disclosure Statement, because it fails to provide "adequate information" in accordance with § 1125 of the United States Bankruptcy Code.

OBJECTIONS TO APPROVAL OF DISCLOSURE STATEMENT

§ 1125 of the United States Bankruptcy Code requires that Disclosure Statements provide "adequate information," which is defined as:

Information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan.

11 U.S.C. § 1125(a)(1).

The determination of what constitutes "adequate information" is within the discretion of the bankruptcy court. In Re Cardinal Congregate I, 121 B.R. 760, 764-65 (Bankr. S.D. Ohio 1990). A disclosure statement should not be approved if it fails to provide sufficient information about risks regarding the means by which a plan is to be funded. Id. at 764. In addition, a

disclosure statement must contain all information relating to the risks posed to creditors and equity holders under the proposed plan of reorganization. In Re Unichem Corp., 72 B.R. 95, 96-97 (Bankr. N.D. Ill. 1987).

I. The Disclosure Statement Should Not Be Approved Because It Fails To Provide Sufficient Information Concerning The Settlement And Contract Dispute Amongst Travelers, Debtor And Mestek.

In the Disclosure Statement, Debtor and Mestek assert that the settlement between Travelers, Debtor and Mestek is "critical" and "significant" to Debtor's reorganization. See Disclosure Statement Section VI(E)(4). However, the Disclosure Statement fails to provide sufficient information as to the true nature of the dispute pertaining to the settlement, and that Debtor's own parent and Plan proponent (Mestek) is the sole cause of said dispute. Likewise, the Disclosure Statement fails to disclose the possibility that the settlement will not be enforced, or the effects that such a determination will have on Debtor's reorganization. Further, although the Disclosure Statement attempts to characterize the contract dispute between Travelers, Debtor and Mestek as a core proceeding that must be adjudicated by this Court, it fails to disclose Travelers' positions on such issues and why state courts may not resolve the issues.

A. The Disclosure Statement Fails To Disclose A Fundamental Contradiction That Exists In The Plan.

The Disclosure Statement vaguely refers to Travelers' Motions to Enforce Settlement, and Mestek's inclination to oppose Debtor's Motion to Assume or Approve. See Disclosure Statement Section VI(E)(1)-(4). However, the Disclosure Statement fails to reveal that Mestek (Debtor's own parent and Plan proponent) is the lone reason that the settlement has not been performed. In turn, the Disclosure Statement fails to disclose the presence of a fundamental contradiction within the Plan. The fact that Debtor, on the one hand, wholeheartedly seeks performance of the settlement, while, at the same time, its parent corporation and Plan proponent

asserts that it is not even a party to the settlement, must be disclosed. Such information is wholly relevant to the issue of whether Mestek is the appropriate party sponsor for Debtor's reorganization.

B. The Disclosure Statement Fails To Disclose The Implications Of The Settlement Not Being Enforced.

Although the Disclosure Statement states that the settlement is "critical" and "significant" to its reorganization, it contains no explanation as to the consequences of the settlement not being enforced. In order to provide interested parties with adequate information with which to make an informed decision about the Plan, the Disclosure Statement should provide specifics as to the implications of the settlement not being enforced.

C. The Disclosure Statement Fails To Disclose That The Contract Dispute Between Travelers, Debtor And Mestek Should Be Remanded To State Court.

The Disclosure Statement creates the misimpression that the contract dispute is before this Court. See Disclosure Statement Section VI(E)(1)-(4). Similarly, the Disclosure Statement creates the perception that the dispute is a core proceeding, which can only be resolved by this Court by way of Debtor's Motion to Assume or Approve. See Disclosure Statement Section VI(E)(4). Furthermore, the Disclosure Statement makes it seem as if the contract dispute can be resolved by this Court in short order. What the Disclosure Statement fails to mention, however, is that the dispute is not even before this Court, but rather, Debtor removed it from state court to federal court, where it is currently subject to Travelers' Motions for Abstention and Remand.

Travelers appropriately raised the state law contract actions in the state courts by way of its Motions to Enforce Settlement. Shortly after Debtor filed for bankruptcy, Debtor removed the two state court actions to federal court, sought a transfer of the dispute to this Court, and then filed its Motion to Assume or Approve. From the time Debtor removed the state court actions,

Travelers has expressly disputed that the federal courts, and this Court in particular, should retain jurisdiction over the state law contract issues. Travelers has not sought the benefit of this Court's jurisdiction by filing a proof of claim, Travelers filed Motions for Abstention and Remand in response to Debtor's removal, and the federal court in the Illinois Action ruled that Travelers' Motion for Abstention and Remand will be dealt with prior to Debtor's Motion to Transfer. In addition, Travelers filed a Motion to Defer Ruling on Debtor's Motion to Assume or Approve in this Court, specifying that the Motion is premature due to the disputed contractual issues (which should only be resolved by state courts), the disputed contractual issues are not presently before this Court, and that the resolution of the disputed state law issues is best left to the state courts.

Therefore, there is no question that the Disclosure Statement does not fully or accurately describe the dispute between Travelers, Debtor and Mestek. Accordingly, the Disclosure Statement should not be approved because it does not accurately portray the background and posture of a dispute that it says is "critical" and "significant" to the Plan.

D. The Disclosure Statement Fails To Disclose Why This Court Must Resolve The Disputed State Law Issues Between Travelers, Debtor And Mestek, And Why A State Court May Not Resolve The Issues.

The Disclosure Statement blankly states, "Because the resolution of this [contract] dispute is so critical to the Plan, it is important to the Debtor that the dispute over the settlement agreement be resolved by the Bankruptcy Court, and not by the Illinois or Iowa courts." See Disclosure Statement Section VI(E)(4). Aside from the fact that the Disclosure Statement fails to specifically explain why the resolution of the dispute is "so critical" to the Plan, the Disclosure Statement does not specify why this Court must resolve the dispute or why a state court may not resolve the dispute. Instead, Plaintiff merely relies on the remote possibility of inconsistent judgments "that could affect the estate." Id. As the contract dispute between Travelers, Debtor

and Mestek is a non-core, *state* law dispute, which logically should be resolved by a state court, the Disclosure Statement should reveal the specific reasons why this Court, and not the state courts, must resolve it. Law in the Seventh Circuit (where the Illinois Action is pending) is clear that such state law contract disputes are non-core matters, the resolution of which is best left to state courts. In Re United States Brass Corp., 110 F.3d 1261, 1268-69 (7th Cir. 1997); accord, Beard v. Braunstein, 914 F.2d 434, 445 (3d Cir. 1990); Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50, 84, 102 S. Ct. 2858 (U.S. 1982)(bankruptcy courts are not empowered to adjudicate a state contract action, based on a pre-petition contract, where the creditor has not filed a proof of claim with the bankruptcy court).

II. The Disclosure Statement Fails To Provide Adequate Information As To The Risk That Certain Plan Provisions Violate The Terms Of The Travelers Policies, The Risk That The Court Does Not Have Jurisdiction Over Travelers', Debtor's And Mestek's Contract And Insurance Coverage Dispute, And The Risk That The Plan Impermissibly Seeks To Rewrite The Travelers Policies.

A key concept of the Plan is the transfer and assignment of any and all insurance rights to Mestek. See Disclosure Statement Section VII(G)(8); Plan Section 7.10. One of the core insurance coverage disputes between Travelers, Debtor and Mestek is whether Mestek even qualifies as an insured under the Travelers Policies; Travelers disputes that Mestek qualifies as an insured. Thus, pursuant to the language of the Travelers Policies, the only way that Mestek would be entitled to a transfer or assignment of rights under would be if Travelers consents to such a transfer or assignment. Travelers has yet to provide Debtor and Mestek with such consent. However, the Disclosure Statement does not disclose that Travelers has not consented to the assignment of its policies and rights thereunder, nor does it even disclose that the policies require Travelers consent for such assignment. Instead, the Disclosure Statement and Plan set forth certain Plan provisions, which, if entered by the Court, will potentially violate Travelers'

assignment rights. See Disclosure Statement Section VII(G)(8); Plan Section 7.10. In addition, depending on the language within the TCE Trust Agreement and Claims Resolution Procedures, which have not even been provided at this juncture, the Plan may violate Travelers' other policy rights in general (*e.g.* cooperation of insured, payment of claims upon judgment after actual trial or settlement consented to by Travelers).

A. The Disclosure Statement Should Disclose The Risk That The Plan May Violate Certain Anti-Assignment Restrictions Contained In The Travelers Policies.

As established *supra*, a key concept of the Plan is the transfer and assignment of any and all insurance rights to Mestek. See Disclosure Statement Section VII(G)(8); Plan Section 7.10. Travelers has not consented to assignment of its policies under the Plan. In addition, based on the information thus far disclosed, the Plan would materially increase Travelers' risk, and thus, it is wholly reasonable for Travelers to refuse consent under such circumstances.

Insurance policies cannot be assigned in situations where the insurer's contractual risk is to be modified. Henkel Corp. v. Hartford Accident And Indemn. Co., 29 Cal. App. 4th 934, 945, 62 P.3d 69, 75, 129 Cal. Rptr. 2d 828, 836 (Cal. 2003)(it is reasonable to uphold an insurer's contractual right to accept or reject an assignment, in view of the potential for increased burdens). A purported assignment by a debtor is ineffective to transfer rights, where the transfer increases the insurer's risk and is inconsistent with the insured's duty to cooperate in its own defense. Caldwell Trucking PRP Group v. Spalding Composites Co., Inc., 890 F. Supp. 1247, 1260-61 (D.N.J. 1995).

In this case, the risk under the Travelers Policies would be modified if, upon assignment of the policies, Travelers' rights to pay claims upon judgments after trial or consented-to settlements, to participate in the defense of claims, and to the cooperation of the insured will all

be nullified. That is not the contract or risk that Travelers undertook when it chose to enter into the contracts of insurance with Debtor. At this juncture, it is impossible for Travelers to fully ascertain how its rights will be altered by such an assignment, as neither the TCE Trust Agreement nor the Claims Resolution Procedures have been provided. Indeed, it is impossible to determine how insurance proceeds will be channeled into the Trust, which also relates to the anti-assignment provisions within the Travelers Policies, should such funds be channeled to Mestek without Travelers' consent. Therefore, at a minimum, the Disclosure Statement should disclose that there is a material risk that any proposed policy assignment will not be effective, and that the insurance coverage purported to be assigned by the Plan may not be available.

B. The Disclosure Statement Should Disclose The Risk That The Court Cannot Address The Contract And Insurance Coverage Issues Between Travelers, Debtor And Mestek For Jurisdictional And Procedural Reasons.

1. Insurance Coverage And State Law Contract Disputes Are Non-Core Matters.

As indicated *supra*, this Court lacks jurisdiction to enter a final order concerning the rights and obligations of the parties under pre-petition insurance policies and contracts, as such questions are non-core matters under 28 U.S.C. § 157(b)(2). Beard v. Braunstein, 914 F.2d 434, 445 (3d Cir. 1990)(action involving pre-petition contracts, allegedly breached before and after the filing of a petition, is entirely non-core); In Re United States Brass Corp., 110 F.3d 1261, 1268-69 (7th Cir. 1997)(insurance coverage dispute between debtor and insurer is non-core); Sullivan v. Maryland Cas. Co. ("In Re Ranex Intern., Inc."), 91 B.R. 313, 315 (Bankr. E.D. Pa. 1988)(declaratory judgment action regarding insurance coverage issued pre-petition is not a core proceeding); Amatex Corp. v. Aetna Cas. & Surety Co. ("In Re Amatex Corp."), 107 B.R. 856, 863 (E.D. Pa. 1989)(adversary proceeding seeking declaratory relief regarding insurance coverage is a non-core matter); Northern Pipeline Construction Co. v. Marathon Pipe Line Co.,

458 U.S. 50, 84, 102 S. Ct. 2858 (U.S. 1982)(bankruptcy courts are not empowered to adjudicate a state contract action, based on a pre-petition contract, where the creditor has not filed a proof of claim with the bankruptcy court). The Disclosure Statement should disclose the possibility that this Court does not have jurisdiction to enter the proposed findings regarding the Travelers Policies and/or the settlement between Travelers, Debtor and Mestek.

2. A Declaration As To Insurance Coverage Rights And/Or The Existence, Enforceability and Validity Of The Settlement Requires An Adversary Proceeding.

Although Travelers expressly contests that this Court has jurisdiction over both the insurance coverage and disputed settlement issues, if the Court somehow did have jurisdiction, it could not declare the rights and obligations of the parties under the Travelers Policies or the settlement without an adversary proceeding, as required by Rule 7001 of the Federal Rules of Bankruptcy Procedure. FED. R. BANKR. P. 7001. (Adversary proceeding required for "a proceeding to obtain a declaratory judgment relating to any of the foregoing..."); In Re McKay, 732 F.2d 44, 47-48 (3d Cir. 1984); Conxus Fin. Corp. v. Motorola, Inc. ("In Re Conxus Communications, Inc."), 262 B.R. 893, 899 (D. Del. 2001). A Plan proponent cannot simply purport to pre-empt or summarily dispose of pending or potential state-law litigation in favor of a Debtor's bankruptcy proceedings, as Debtor and Mestek attempt to do here. See Disclosure Statement Section VII(E)(4). Hence, the Disclosure Statement should disclose these jurisdictional and procedural limitations.

C. The Disclosure Statement Should Disclose The Risk That The Court Cannot Rewrite Or Change The Insurance Policies

Apart from the procedural and jurisdictional limits, there is no source of power in the Bankruptcy Code or elsewhere for this Court to rewrite or change the Travelers Policies, which is exactly what the Plan proposes to do. For instance, and as established *supra*, the Plan seeks to

nullify the anti-assignment provisions within the Travelers Policies. See Disclosure Statement Section VII(G)(8); Plan Section 7.10.

However, it is clear that "the rights and obligations of the Debtor and [its insurer] under [the insurer's] policy are not altered because of the Debtor's Chapter 11 filing." Amatex Corp., 107 B.R. at 865-666; Foothill Capital Corp. v. Clares Food Market, Inc. ("In Re Coupon Clearing Service, Inc."), 113 F.3d 1091, 1099 (9th Cir. 1997)(the nature and extent of a debtor's interest in property is determined by state law, with the estate having no greater rights in property than those held by the debtor prior to bankruptcy); Moody v. Amoco Oil Co., 734 F.2d 1200, 1213 (7th Cir. 1984)("whatever rights a debtor has in property at the commencement of the case continue in bankruptcy -- no more, no less"); In Re Amatex Corp., 97 B.R. 220, 221 (E.D. Pa. 1989)("we do not believe our equitable powers under sec. 105(a) or otherwise, can stretch so far as to alter contractual rights established under state law in a manner not expressly authorized by the Bankruptcy Code"); aff'd, Amatex Corp. v. Stonewall Ins. Co., 102 B.R. 411 (E.D. Pa. 1989); aff'd, 908 F.2d 964 (3d Cir. 1990).

Therefore, the Disclosure Statement should disclose the risk that because the Plan purports to impermissibly alter the Travelers Policies, the Plan cannot be confirmed in its present form.

III. The Disclosure Statement Should Disclose That Any Payment On Travelers' Part Will Depend On A Determination As To The Existence, Enforceability And Validity Of The Settlement And The Outcome Of The State Court Coverage Actions.

As noted *supra*, the Disclosure Statement refers to the settlement between Travelers, Debtor and Mestek as "critical" and "significant" to Debtor's reorganization. See Disclosure Statement Section VI(E)(4). However, the Disclosure Statement does not disclose the risk that a court may adjudicate the settlement to be unenforceable. In addition, the Disclosure Statement

does not specify the implications that such an adjudication will have on Plan implementation. Moreover, the Disclosure Statement fails to specify that, in the event the settlement is held invalid and unenforceable, the parties will re-initiate hotly contested insurance coverage litigation. See Disclosure Statement Section VII(E)(1)-(4).

Thus, in addition to disclosing the possibility and implications of the settlement not being enforced, the Disclosure statement should disclose the impact on Debtor's reorganization if Debtor and Mestek lose in the coverage litigation.

IV. The Disclosure Statement Should Disclose That The Plan May Seek Payment For Claims That Are Not Covered By The Travelers Policies.

It is well-settled that insurance proceeds may only be used for the payment of covered claims, and not for an insured's other liabilities. Matter Of Celotex Corp., 152 B.R. 661, 664-654 (M.D. Fla. 1993)(the insured continues to bear the burden of proving that its losses are the result of coverage claims as defined by the policy). The Disclosure Statement must disclose that any available insurance coverage under the Travelers Policies only applies to covered claims, and that any attempts to obtain coverage for uncovered claims are improper¹.

V. The Disclosure Statement Should Disclose That The Plan May Deprive Travelers Of Its Fundamental Right To Control The Defense And Settlement Of Covered Claims.

As indicated *supra*, the Travelers Policies give Travelers the right and duty to defend covered lawsuits, and they give Travelers the right to investigate, negotiate and settle claims or

¹ For instance, the Travelers Policies incorporate pollution exclusions, which bar coverage for "bodily injury" and "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants. Thus, the Travelers Policies will not provide coverage for any claims for "bodily injury" or "property damage" arising out of pollution. In turn, the Disclosure Statement should specify that the Travelers Policies do not provide coverage for such claims .

suits. Indeed, Travelers has participated in the defense of certain underlying suits against Debtor. However, according to the Disclosure Statement, only Debtor has the authority to file an objection to the allowance of a claim under the Plan. See Disclosure Statement Section VII(E)(1); Plan Section 9.01. In addition, Debtor has the sole and exclusive right to initiate and prosecute any objections to claims, to litigate any objections, and to settle or compromise any claims or interests. See Disclosure Statement Section VII(E)(4); Plan Section 9.06. Thus, there is no question that the Plan impermissibly deprives Travelers of its fundamental right to control the defense and settlement of claims. Accordingly, if the Plan is implemented in its present form, it will violate the Travelers Policies. Such a material risk should be disclosed in the Disclosure Statement.

VI. The Disclosure Statement Should Disclose That Debtor Has A Continuing Duty To Cooperate With Travelers.

The Disclosure Statement does not specify whether the Plan contains a requirement or obligation that Debtor satisfy its various continuing duties and obligations under the Travelers Policies, most notably, its duty to cooperate. The duty to cooperate under the Travelers Policies requires, without limitation, preserving records and providing records, testimony and other assistance to cooperate with Travelers in the defense of any covered claims. Any breach of the duty to cooperate by Debtor could potentially defeat coverage otherwise available under the Travelers Policies. This risk should be disclosed in the Disclosure Statement, and such a requirement should be incorporated into the Plan.

VII. The Disclosure Statement Should Not Be Approved Because Debtor And Mestek Have Failed To Provide Crucial Plan Documents.

The Disclosure Statement fails to attach crucial and basic Plan documents, which contain material information concerning implementation of the Plan. As specified in the Disclosure

Statement, a basic premise of the Plan is the establishment of a TCE Trust, which will "resolve and pay TCE claims in accordance with the TCE Trust Agreement and the Claims Resolution Procedures." See Disclosure Statement Section II(A). However, Debtor and Mestek have not provided the TCE Trust Agreement or the Claims Resolution Procedures. Thus, there is no way to ascertain how present and future claims are processed, liquidated and paid. Likewise, there is no way to decipher how funds, including insurance funds, are channeled into the Trust.

Further, the Disclosure Statement and Plan also fail to attach the following exhibits, which are wholly necessary for interested parties to make an informed decision regarding the Plan: (1) Exhibit 2 to the Plan: List of Executory Contracts and Unexpired Leases to be Assumed by the Reorganized Debtor; (2) Exhibit 6 to the Plan: Schedule of Indemnification Agreements for Section 6.06 [Indemnification Obligations] of the Plan; (3) Exhibit 6 to the Plan: Form of Insurance Coverage Recovery and Contribution Action Assignment; (4) Exhibit C to the Disclosure Statement: Pending Insurance Actions; and (5) Exhibit E to the Disclosure Statement: Projections.

A. The Failure To Provide The TCE Trust Agreement And Claims Resolution Procedures Deprives Interested Parties Of Information Necessary To Make An Informed Judgment About The Plan.

In the event Travelers, Debtor and Mestek resume their insurance coverage dispute, as established *supra*, Travelers is concerned that the TCE Trust Agreement and the Claims Resolution Procedures will violate Travelers' contractual rights and purport to rewrite its policies, while discharging Debtor from certain of its contractual obligations.

For instance, without the TCE Trust Agreement and Claims Resolution Procedures, Travelers has no way of knowing who the trustees will be; they could be the claimants' lawyers or their nominees (thereby allowing the proverbial fox to guard the hen house). Likewise,

Travelers does not even know if the Plan permits claims to be "allowed" by trustees. Thus, at this juncture, Travelers is forced to presume that claimants' lawyers will serve as trustees, and that the lawyers will preside over claim "allowance." In that regard, it is wholly plausible that claims will be "allowed" in certain ways that the Travelers policies do not permit, *i.e.*, not by way of settlements in which Travelers has consent rights or by way of judgment after trial, but rather, by claimants' attorneys merely deciding the validity of the claims they assert for their clients².

In addition, without the TCE Trust Agreement and Claims Resolution Procedures, it is impossible for Travelers to ascertain how insurance funds are channeled into the Trust; if the funds are somehow channeled to Mestek, the anti-assignment provisions within the Travelers Policies may be violated. Thus, it is impossible for Travelers fully to decipher whether the Plan, if implemented, will violate the anti-assignment provisions within the Travelers Policies.

As the Travelers Policies explicitly limit Travelers' obligations to pay covered claims only after final judgments against Debtor or by settlements approved by Travelers in writing, the Disclosure Statement should disclose any claim "allowance" procedure that involves the trustees processing claims, and in turn, which may violate the language of the Travelers Policies. In addition, as the Travelers Policies contain express anti-assignment provisions, the Disclosure Statement should disclose and specify how insurance funds are channeled into the Trust. Further, the Disclosure Statement should divulge the possibility that the Court will reject any

² Moreover, claimants' attorneys may seek to assert claims which are not covered by the Travelers Policies, such as bodily injury or property damage claims resulting from alleged pollution. As indicated *supra*, the Travelers Policies incorporate pollution exclusions, which bar coverage for "bodily injury" and "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants. Nowhere does the Disclosure Statement specify that the claim "allowance" procedure will disallow non-covered claims, such as those arising out of bodily injury or property damage.

attempts to violate the language of the Travelers Policies, as well as the effects that such a ruling will have on implementation of the Plan.

VIII. The Disclosure Statement Should Not Be Approved Because Debtor And Mestek Have Failed To Provide Sufficient Information With Which To Determine The Value Of Claims.

Debtor and Mestek have failed to provide material information pertaining to the classification and treatment of claims and interests. See Disclosure Statement Section II(B). In particular, the Disclosure Statement does not specify the estimated claim amounts, nor does it provide the percentage of liquidated claim value that claimants will recover. In lieu of such information, the Disclosure Statement provides repeated blank lines with no indication as to when this information will be filled in. Id. Without such basic information, neither claimants nor any other interested party can know how much their claims are worth under the Claims Resolution Procedures.

IX. The Disclosure Statement And Plan Provide Insufficient Information Relating To The Treatment Of Future Governmental Claims Or Future Claims Arising From Further Migration Of Contamination.

Aside from the fact that the Disclosure Statement and Plan contain inadequate information regarding the claims resolution process, and the classification and treatment of claims, the Disclosure Statement and Plan do not provide sufficient information regarding the treatment of future governmental claims or claims arising from further migration of any alleged contamination, which is wholly relevant in the environmental contamination context.

The only specific information pertaining to governmental claims relates to Debtor's present liability to governmental entities in relation to the Lockformer Site in Lisle, Illinois. See Disclosure Statement Section XIII(9); Plan Section 7.17. Similarly, the Disclosure Statement and Plan do not appear to contemplate future claims arising from further migration of any

alleged contamination. Neither the Disclosure Statement nor the Plan specifically address the treatment of such claims; it is unclear whether the Plan injunctions will bar or channel such claims in light of sovereign immunity issues. Further, the various portions of the Disclosure Statement and Plan which purportedly address "Claim(s)," "Environmental Claims," "Future Demand(s)," "Future TCE Claimant(s)," "Government Remediation Claims," "Released Claims," "TCE Channeling Injunction(s)," "TCE Claim(s)," "TCE Property Damage Claim(s)," "TCE Property Damage Contributions Claim(s)," "Third-Party Claim(s)," "Unasserted Claim(s)" and "Unasserted TCE Property Damage Claim(s)" do not sufficiently specify the appropriate treatment of such claims.

X. The Disclosure Statement Provides Insufficient Information Regarding Proposed Means For Implementation.

The Disclosure Statement purports to provide information regarding the means for implementation of the Plan. Under the Plan, in exchange for a "Capital Contribution," the guaranty of certain environmental liabilities and the "Mejdrech Hook-Up Costs," Mestek would become the owner of the common stock of the Reorganized Debtor. See Disclosure Statement Section VII(G). However, this "Restructuring Transaction Consideration" is subject to higher and better offers pursuant to Section 7.02 of the Plan by an "Alternative Plan Sponsor" who meets certain criteria. Among the requirements for an Alternative Plan Sponsor is that it submit a bid "equal to (A) the Restructuring Transaction Consideration plus (B) \$4,000,000." See Plan Section 7.01(a)(iii).

Neither the Disclosure Statement nor the Plan define Capital Contribution or otherwise value the Restructuring Transaction Consideration. The Disclosure Statement should provide information regarding the value that Mestek proposes to pay for the stock of the Reorganized Debtor. Without such information, it is impossible to evaluate whether the proposed transaction

is in the best interest of creditors.

Moreover, the Disclosure Statement provides insufficient information regarding the proposed overbid required by an Alternative Plan Sponsor. The Debtor proposes that the Alternative Plan Sponsor must provide a minimum overbid of \$4,000,000 above the Restructuring Transaction Consideration. See Plan Section 7.01(a)(iii). However, there is no information by which to judge the reasonableness of the overbid requirement. An overbid requirement that is implemented to chill bidding and discourage competitive bidding is improper. In Re Mama's Original Foods, Inc., 234 B.R. 500, 505 (Bankr. C.D. Ca. 1999)(requirement that competitive bids be at least 11.3% above negotiated sale agreement held improper). Rather, the overbid must be reasonable in the context of the sale transaction. In Re Tempo Technology Corporation, 202 B.R. 363, 369 (D. Del. 1996)(upholding bankruptcy court's finding that overbid requirement was "not unreasonable" under all circumstances). The Disclosure Statement fails to provide any information regarding Mestek's proposed Capital Contribution or otherwise place a value on the Restructuring Transaction Consideration. The Debtor should provide information regarding the value of the Restructuring Transaction Consideration, so that parties may properly assess the proposed restructuring transaction.

XI. The Disclosure Statement Fails To Provide Sufficient Information With Which To Analyze Application Of The Absolute Priority Rule.

Because the Disclosure Statement fails to disclose the value of the Restructuring Transaction Consideration, it in turn provides insufficient information with which to evaluate whether the Plan violates the absolute priority rule of 11 U.S.C. § 1129(a)(8). The Plan calls for Mestek, which currently holds 100% of the stock of Met-Coil, to hold 100% of the stock of the Reorganized Debtor in exchange for the Restructuring Transactions Consideration. See Disclosure Statement Section II(A). However, without sufficient information regarding the

value of the Restructuring Transactions Consideration, it is impossible to evaluate whether the Plan would provide new value "reasonably equivalent to the value of the [stock of the reorganized debtor]." In Re Northeast Family Eyecare, P.C., 2002 WL 1836307 *5 (Bankr. E.D. Pa. 2002).

XII. The Disclosure Statement Should Resolve The Inconsistency Regarding The Ownership Of The Stock Of The Reorganized Debtor

The Disclosure Statement and the Plan have a fundamental inconsistency regarding the ownership of the stock of the Reorganized Debtor. The Plan states that as a condition to confirmation, 100% of the stock of the Reorganized Debtor must be owned by the Winning Plan Sponsor, See Plan Section 11.01(i)(C), while the Disclosure Statement states that as a condition to confirmation, the ownership of the stock of the Reorganized Debtor must be owned by Mestek. See Disclosure Statement Section XIII (6). Thus, if the Disclosure Statement is correct, the entire Alternative Restructuring Transaction procedures of Section 7 of the Plan would be rendered moot, as the Plan would fail without Mestek as the Plan sponsor. Therefore, the Disclosure Statement should clarify the inconsistency between these two provisions.

XIII. Additional Defects

A. In purporting to address Distributions to Claimholders, the Disclosure Statement fails to specify the monetary amount in which Class 6.2 Claims (Personal Injury Actions Claims) shall be allowed under the Plan. See Disclosure Statement Section VII(D)(15).

B. Although the Disclosure Statement vaguely refers to Resolution of Disputed Claims and Interests, it is impossible to decipher the exact procedures to be utilized in resolving disputed claims and interests without the TCE Trust Agreement and Claims Resolution Procedures. See Disclosure Statement Section VII(E)(4).

C. In purporting to address the Selection of Highest and Best Plan Proposal, the

Disclosure Statement does not specify the monetary amount in which bidding increments will take place. See Disclosure Statement Section VII(G)(1)(c).

D. In purporting to address the consideration to be paid by Debtor to the TCE Trust for the TCE Trust's assumption of the TCE Claims, neither the Plan's Glossary, nor the Disclosure Statement specify the amount of consideration the Debtor will pay as the TCE Claims Distribution Fund. See Plan Glossary at p. 20; Disclosure Statement Section VII(G)(3).

E. In purporting to address the Transfer of Insurance Proceeds and Assignment of Contribution Actions to Mestek, the Disclosure Statement refers to Exhibit 7, yet Exhibit 7 is not attached to the Plan. See Disclosure Statement Section VII(G)(8).

F. In purporting to address Excess Trust Assets, the Disclosure Statement refers to "Article ____" of the TCE Trust Agreement, yet the Article number is not provided and, as indicated, the Trust Agreement is not attached to the Plan. See Disclosure Statement Section VII(H)(4). The fact that the Disclosure Statement does not even provide the Article number leads to the belief that Debtor and Mestek have not even completed drafting the TCE Trust Agreement, which is crucial to Plan confirmation.

G. In purporting to address Alter-Ego Claims against Mestek, the Disclosure Statement provides no information whatsoever regarding the underlying facts of the claims or the monetary value of such claims. In addition, although the Disclosure Statement refers to the Debtor's affidavit in support of Plan Confirmation, which will supposedly discuss the Alter-Ego Claims, said affidavit has not been provided at this juncture. See Disclosure Statement Section IX(A)(2).

H. In purporting to address the treatment of Class 4.3 Claims (Mestek Unsecured Claims), the Plan states, "In the event that Mestek is not the Winning Plan Sponsor, Mestek's

Allowed Class 4.3 Claims shall be treated as Class 4.1 Claims [General Unsecured Claims] and \$2 million of the distribution with respect to such Claims shall be contributed to the TCE Trust Distribution Fund in exchange for the TCE Channeling Injunctions with Mestek receiving the balance of any distribution of such Claims." See Plan Section 3.10. Neither the Disclosure Statement nor the Plan provides information pertaining to the value of Mestek Unsecured Claims, nor do they provide an explanation as to the significance of the \$2 million distribution or how the \$2 million amount was derived. Therefore, the Disclosure Statement and Plan have provided inadequate information with which to determine whether the \$2 million is reasonable under such circumstances.

I. In purporting to address the treatment of Class 5.2 Claims (DeVane Claims), the Plan states, "The Class 5.2 Claims shall be Allowed in the aggregate amount of \$_____, and such amount shall be paid in Cash pro rata to the Class 5.2 Claimholders by the Reorganized Debtor on the Effective Date; provided, that each holder of a Class 5.2 Claim elects on a timely-filed Ballot to accept such Claimholder's treatment under the Plan as a Class 5.2 Claimholder." See Plan Section 3.13. Neither the Disclosure Statement nor the Plan provides the aggregate amount in which Class 5.2 Claims shall be allowed under the Plan, and such information is necessary for interested parties to make an informed decision about the Plan.

J. Debtor and Mestek have attached Debtor's Balance Sheet as of September 30, 2003 as Exhibit B to the Disclosure Statement, however neither the Disclosure Statement nor the Plan provides sufficient information pertaining to the Balance Sheet and Debtor's financial state, which would permit interested parties to make an informed decision about the Plan. For instance, although the Balance Sheet identifies Debtor's affiliates as having \$2,928,000 in accounts payable (a significant amount), no specific information is provided detailing for what

the amount is owed. See Exhibit B to Disclosure Statement. Similarly, although the Balance Sheet identifies Debtor's affiliates as owing \$11,960,000 in notes payable, no specific information is provided for what the amount is owed. Id. In addition, the Balance Sheet does not provide any information relating to past dividends paid by Debtor, and Debtor has not provided any information pertaining to dividends paid in the past Id. Hence, the Balance Sheet is extremely limited because it only provides information as of September 30, 2003, and in order to get a full understanding of Debtor's and the Plan proponents' financial state, Debtor should attach a balance sheet as of September 30, 2002, provide its income statements from at least 2000 forward, and provide information relating to past dividends.

CONCLUSION

For the reasons stated above, the Disclosure Statement fails to provide adequate information regarding material aspects of the Plan and fails to disclose material risks associated with the Plan. Without such information, the Disclosure Statement does not satisfy § 1125 of the United States Bankruptcy Code, and it should not be approved³.

³ Reservation of Rights

Travelers expressly reserves, and does not waive, all of its rights, defenses, limitations and/or exclusions in connection with the insurance contracts, applicable law or otherwise. Travelers further reserves all rights to assert any and all such rights, defenses, limitations and/or exclusions in the Iowa Action and Illinois Action. Nothing contained in these Objections shall be deemed to expand any coverage that may otherwise be available under any insurance policies or otherwise. Nothing in these Objections shall be construed as an acknowledgment that any policies or pre-petition settlement agreements cover or otherwise apply to any claims, losses or damages on account of any claims or otherwise, or that any such claims or causes of action are eligible for payment. Travelers reserves its rights to amend, modify or supplement these Objections in response to, or as a result of, the filing of any Plan supplement by the Plan Proponents, any discovery being conducted in connection with confirmation of the Plan, and/or any submission in connection with the Plan or this bankruptcy case filed by any party-in-interest. Travelers also reserves the right to adopt any other objections to approval of the Disclosure Statement filed by any party

Respectfully submitted,

Dated: December 3, 2003
Wilmington, Delaware

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CERTIFICATE OF SERVICE

I, Tobey M. Daluz, Esquire hereby certify that on this 3rd day of December, 2003,

I caused a true and correct copy of Travelers' Objections to Debtor's Disclosure Statement
Regarding Proposed Plan of Reorganization for Met-Coil Systems Corporation to be served on
the attached service list in the manner indicated.

Dated: December 3, 2003
Wilmington, Delaware

/s/ Tobey M. Daluz
Tobey M. Daluz, Esquire (No. 3939)

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