

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

In re:	)	Chapter 11
	)	
Met-Coil Systems Corporation,	)	Case No. 03-12676 (MFW)
	)	
Debtor.	)	<b>Objection Date: Dec. 3, 2003</b>
	)	<b>Hearing Date: Dec. 10, 2003 at 10:30 a.m.</b>

**DEBTOR'S OBJECTION AND RESPONSE TO TRAVELERS' MOTION  
TO DEFER RULING RE : DOCKET NO. 196 AND TRAVELERS'  
PRELIMINARY RESPONSE TO DEBTORS MOTION TO ASSUME  
SETTLEMENT, OR IN THE ALTERNATIVE, TO APPROVE SETTLEMENT**

Met-Coil Systems Corporation, debtor and debtor in possession in the above-captioned case (the "**Debtor**"), hereby submits its objection and response (the "**Objection**") in support of its Motion to Assume Settlement, or in the Alternative, to Approve Settlement (the "**Motion to Assume**") and in opposition to Travelers Motion to Defer Ruling re Document No. 196 (the "**Deferral Motion**") and Travelers' Preliminary Response to Debtor's Motion to Assume Settlement ("**Travelers' Response**"). In support of its Objection, the Debtor states as follows:

**INTRODUCTION**

The response of Travelers Casualty and Surety Company and the Travelers Indemnity Company of Illinois (collectively, "**Travelers**") to the Motion to Assume is curious. There is no substantive disagreement between Travelers and the Debtor with respect to the Motion to Assume. Both the Debtor and Travelers agree that a valid and binding settlement agreement was reached between the parties on July 16, 2003 (the "**Settlement Agreement**"). See Motion to Assume, ¶ 8; Deferral Motion, ¶ 1. Furthermore, Travelers has clearly demonstrated its desire to enforce and implement the Settlement Agreement. In fact, Travelers has filed motions to enforce the Settlement Agreement in both the Illinois

Coverage Lawsuit and the Second Iowa Coverage Lawsuit.<sup>1</sup> See Deferral Motion, ¶ 6. The Debtor also desires to enforce and assume the Settlement Agreement. The Settlement Agreement represents a valuable asset of the Debtor's estate, the proceeds of which will have a significant benefit for the Debtor's reorganization.

Despite Travelers' belief that the Settlement Agreement is enforceable, and its shared desire to enforce the Settlement Agreement, Travelers now stands in the way of the Debtor's Motion to Assume. Travelers inexplicably argues that the Debtor's Motion to Assume is premature. The Motion to Assume is not premature. It is properly before this Court and is ready to be adjudicated. This Court has the authority to rule on the Motion to Assume, and thus the Court should deny the Deferral Motion and grant the Debtor's Motion to Assume.

### **ARGUMENT**

#### **A. Travelers' Deferral Motion Should Be Denied.**

The Debtor's Motion to Assume is properly before this Court and is ripe for approval. By objecting to the Motion to Assume and filing its Deferral Motion, Travelers has placed the issue of the enforceability of the Settlement Agreement squarely before this Court. It is appropriate for this Court, in the context of the Motion to Assume, to determine the validity and existence of the Settlement Agreement. "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 motion." In re III Enterprises, Inc. V, 163 B.R. 453, 459 (Bankr. E.D. Pa. 1994) (finding that a bankruptcy court may rule on the existence of a contract in the context of a motion to reject a contract).

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<sup>1</sup> The Debtor hereby incorporates the terms defined in its Motion to Assume.

In its Deferral Motion, Travelers relies heavily on the Second Circuit's opinion in Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993), and remarkably on the bankruptcy court's decision in III Enterprises, for the proposition that disputed contractual terms must be resolved before a bankruptcy court may rule on a debtor's motion to assume the disputed contract, and therefore Travelers argues that it is inappropriate for this Court to rule on the Motion to Assume at this time. See Deferral Motion ¶ 15. Travelers' reliance on each of these opinions is misplaced.

First, Orion noted that a bankruptcy court could hear and adjudicate a contractual dispute related to a motion to assume. "We note that there is no prohibition on bankruptcy courts, for reasons of efficiency, hearing motions to assume and trying related adversary proceedings simultaneously." Orion, 4 F.3d at 1099. Nothing in Orion should preclude this Court from ruling on the Motion to Assume and resolving any underlying issues, should they exist, in rendering its ruling.

Second, III Enterprises, a case that is factually very similar to our case, stands for the exact opposite proposition as suggested by Travelers. In III Enterprises, the bankruptcy court found that it *could* rule on the enforceability of the contract in the context of a motion to reject a contract under §365. III Enterprises, 163 B.R. at 458. There, Pueblo, a party to a contract with the debtor, filed a declaratory judgment action in Delaware chancery court regarding the existence and enforceability of the contract. Shortly thereafter, the debtor filed for bankruptcy in Pennsylvania, removed the state court action to the Delaware bankruptcy court pursuant to 28 U.S.C. § 1452, and then moved to transfer venue from the Delaware bankruptcy court to the Pennsylvania bankruptcy court. Simultaneously,

Pueblo filed a motion with the Delaware bankruptcy court to remand or abstain from hearing the declaratory judgment action. Meanwhile, the debtor filed a motion to reject the contract in its bankruptcy case in Pennsylvania.

The Pennsylvania bankruptcy court opined that the underlying contract action and the issue of abstention should be decided by the Debtor's "home court," its bankruptcy court. "Both the [state court action] and Pueblo's motion to remand would appear to be properly transferred to this court, the 'home court' of the debtor's bankruptcy for determination." Id. at 459 n.2. In rejecting the argument that it could not decide the issue of whether parties had a valid, enforceable contract in deciding the motion to reject a contract, the bankruptcy court distinguished Orion:

The instant situation contrasts with that of Orion, where the bankruptcy court became embroiled in determination of the enforceable terms of the underlying contract in deciding a § 365(a) motion. The enforceability of the terms of a contract is an issue which may properly be addressed after assumption or rejection occurs. However, assumption or rejection cannot occur at all if the parties do not have a valid, enforceable contract.

Id. at 459 n.4. The bankruptcy court, therefore, went on to determine the enforceability of the contract and ultimately ruled that the contract was not enforceable.

Accordingly, Travelers' assertion that III Enterprises supports and applies Orion is simply incorrect. III Enterprises clearly distinguishes Orion. Furthermore, Travelers' analysis of the facts of III Enterprises is also incorrect. The bankruptcy court there clearly opined that the contract action "would appear to be properly transferred to this Court." Id. at 458 n.2. Furthermore, contrary to Travelers' assertion, Pueblo did not concede

the bankruptcy court's jurisdiction over the matter; indeed, it filed a motion for abstention just like Travelers has done. Id.

III Enterprises is in fact persuasive precedent supporting the denial of the Deferral Motion. In this case, like in III Enterprises, the Debtor opposes the motion for abstention or to remand Travelers filed in the Illinois Coverage Lawsuit, and is seeking to transfer the Illinois Coverage Lawsuit to this Court.<sup>2</sup> Also like in III Enterprises, but unlike in Orion, the issue presented by the Motion to Assume is the existence and validity of the Settlement Agreement, not the enforceability of specific terms of the contract. This Court should follow III Enterprises, determine the enforceability of the Settlement Agreement, and grant the Motion to Assume.

Accordingly, Travelers' Deferral Motion should be denied. The Motion to Assume is properly before this Court and should be decided at this time. This Court has authority to decide all issues related to the Motion to Assume, including the validity and enforceability of the Settlement Agreement.

**B. Travelers' Objection Contained In The Preliminary Response Should Be Overruled**

*1. The Court Should Grant the Motion to Assume*

The Debtor agrees with Travelers' statement that the determination of the validity and enforceability of a contract is a critical threshold issue that must be decided before a bankruptcy court may rule on a motion to assume. Nothing, however, prevents a

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<sup>2</sup> While no briefing schedule has been set on Travelers' motion for abstention or to reject filed in the Second Iowa Coverage Lawsuit, and that case is the subject of motions to stay, the Debtor intends to file a similar objection to the motion for abstention as it filed in the Illinois Coverage Lawsuit, and intends to file a similar motion to transfer venue of the Second Iowa Coverage Lawsuit to the Delaware District Court, which would then be automatically referred to this Court.

bankruptcy court from ruling on that issue. See Id. at 459 (ruling on the enforceability of a contract in the context of a motion to reject a contract).

For example, in Georgia Port Authority v. Diamond Mfg. Co., Inc. (In re Diamond Mfg. Co., Inc.), 164 B.R. 189 (Bankr. S.D. Ga. 1994), a lessor argued that under the Second Circuit's holding in Orion, a bankruptcy court did not have the authority to adjudicate disputes between the parties regarding defaults in the context of a motion to assume a contract. Diamond Manufacturing, 164 B.R. at 202. The bankruptcy court disagreed:

I must disagree with the limitation on the nature of § 365 proceedings. The judicial review of a trustee's decision on whether to assume or reject a particular lease or contract under § 365(b) requires the court to make a fundamental determination of the existence or non-existence of defaults. If such defaults exist, the court cannot approve the assumption unless the cure requirements of § 365 are met. Further, the exercise of good business judgment in a § 365 election mandates a weighing by the trustee of the effect of existing defaults.

Id. Accordingly, this Court can and should adjudicate any underlying issues presented by the parties concerning the existence of the valid, binding Settlement Agreement that may arise in the context of ruling on the Motion to Assume.

As discussed above, the resolution of the existence and enforceability of Settlement Agreement is properly before this Court. Both Diamond Manufacturing and III Enterprises stand for the proposition that a bankruptcy court may rule on the existence of a contract in the context of a motion to assume. Here, this Court may rule on the existence and enforceability of the Settlement Agreement.

Furthermore, the Debtor denies Travelers' assertion that this matter is a non-core matter. Assumption of an executory contract or approval of a settlement is most certainly a core matter. Where a bankruptcy court must determine a threshold issue of state

law that will necessarily have a significant impact on other core bankruptcy functions and will be at the heart of the administration of the bankruptcy case, the determination of such a threshold issue is a core matter. See PSI Net, Inc. v. Cisco Systems Capital Corp. (In re PSI Net, Inc.), 271 B.R. 1, 25 (Bankr. S.D.N.Y. 2001). Here, the determination of the enforceability of the Settlement Agreement will have a significant impact on the Motion to Assume, a core matter that is at the heart of the administration of the Debtor's bankruptcy case.

2. *The Court Should Approve the Settlement Agreement under Rule 9019*

Alternatively, under Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), this Court may approve at this time the Debtor's entry into the Settlement Agreement irrespective of the enforceability of the Settlement Agreement. Indeed, a settlement is not enforceable against a debtor unless and until it is approved by the bankruptcy court. In re Martin, 91 F.3d 389, 395 (3d Cir. 1996). Accordingly, the enforceability of the Settlement Agreement against Mestek is not an issue that must even be decided by this Court in the context of approving a settlement by the Debtor under Bankruptcy Rule 9019.

Rather, the issue to be decided by this Court in the context of whether to approve the Settlement Agreement is whether the Debtor has a legitimate business justification for entering into a settlement with Travelers. In re Martin, 91 F.3d at 395. In determining whether to approve a compromise, a court need only analyze four criteria, none of which consider the enforceability of the agreement. Id. at 393.

Here, the Debtor's legitimate business reasons for entering into the Settlement Agreement cannot be doubted. The Settlement Agreement resolves complex litigation, the

outcome of which would be uncertain. Furthermore, by entering into the Settlement Agreement, the Debtor will not need to spend money litigating the Coverage Lawsuits to obtain the benefit of the settlement proceeds. Accordingly, this Court should approve the Settlement Agreement under Bankruptcy Rule 9019.

Finally, the cases cited by Travelers, In The Matter of Jasmine, Ltd., 258 B.R. 119, 123 (Bankr. D. N.J. 2000), and In re Edwards, 228 B.R. 552, 569 (Bankr. E.D. Pa. 1998), are inapposite. These cases stand for the proposition that in approving a settlement under Bankruptcy Rule 9019, a court should not conduct a mini-trial on the merits of the underlying dispute. Applied to this case, Jasmine and Edwards merely teach that this Court should not get embroiled in the underlying coverage dispute to determine the merits of each parties' claims regarding the scope of insurance coverage. These cases are simply a red herring, however, because there has been no suggestion that this Court must undertake such an examination of the underlying dispute.

### **CONCLUSION**

The Motion to Assume is ripe for adjudication by this Court. Furthermore, this Court has the authority to rule on the enforceability and existence of the Settlement Agreement in the context of the Motion to Assume. Accordingly, this Court should deny Travelers' Deferral Motion.



Likewise, authorizing the Debtor to enter into the Settlement Agreement is in the best interests of the Debtor's estate and is a valid exercise of the Debtor's business judgment. Accordingly, the Bankruptcy Court should approve the Settlement Agreement pursuant to Bankruptcy Rule 9019 and Travelers' Response should be overruled.

Dated: Wilmington, Delaware  
December 3, 2003

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