IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	Case No. 03-12676
MET-COIL SYSTEMS CORPORATION,	)	
	)	
Debtor.	)	**Objection Deadline: 12/5/2003 at 4:00 p.m.**
	)	**Re: Docket No. 293**

OBJECTION OF HONEYWELL INTERNATIONAL INC. TO DEBTOR'S MOTION FOR ENTRY OF ORDER (A) APPROVING PROCEDURES FOR THE CONSIDERATION OF ALTERNATIVE PLAN PROPOSALS AND THE SELECTION OF A WINNING PLAN SPONSOR AND (B) APPROVING FORM AND MANNER OF NOTICE OF ALTERNATIVE PLAN PROCEDURES

Honeywell International Inc. ("Honeywell"), by and through its attorneys, Monzack and Monaco, PA, and McDermott, Will & Emery, hereby files this Objection to *Debtor's Motion For Entry Of Order (A) Approving Procedures For The Consideration of Alternative Plan Proposals and The Selection Of A Winning Plan Sponsor And (B) Approving Form And Manner Of Notice Of Alternative Plan Procedures* (the "Motion"), and in support thereof alleges as follows:

SUMMARY

Debtor's Motion seeking approval of the procedures it proposes for the consideration of alternative plan funding proposals ("bidding procedures") and for the selection of the winning plan proposal ("selection procedures") must be denied. The reasons for the unavoidable rejection of these procedures were set forth in Honeywell's Objection to Debtor's Proposed Disclosure Statement, which was served and filed on December 3, 2003, and are re-stated herein.

It is difficult to conceive of any set of procedures less likely to generate actual competitive bidding and more likely to ensure Mestek's obtaining the Plan funder role on its own

terms. The Debtor alone gets to determine whether a potential bidder is qualified and only after the bidder has submitted to a rigorous and thorough review . The bidder's bid must conform strictly to all of the terms the Debtor and Mestek insist upon, regardless of the need and/or desirability of any one of those terms. In submitting the bid, the bidder must deposit 10% of the total bid value – in cash – with the Court (a requirement from which Mestek is conveniently excused). And, assuming any one is foolhardy enough to actually engage in this process and survives the various obstacles built into these procedures, only the Debtor – without any required input from creditors, the Legal Representative for Future Claimants, or this Court – determines whether the bid is better than Mestek's offer. All of this, despite the fact that nowhere are the terms of Mestek's offer disclosed AND Mestek gets to review each of the bids as they are received.

Debtor's proposed bidding and selection procedures are fatally flawed because they cannot – under any set of circumstances – encourage any true or actual, competitive bidding. Debtor's proposed bidding procedures create only the illusion of an "auction" for the right to become the Plan funder and to acquire an equity interest in the Debtor. The procedures proposed make it clear that the Debtor has no intention of truly considering any of the bids that an alternative plan funder might make during this purported "auction." Every single step of the proposed auction, from the qualification of alternative bidders, through the requirements of the bids, to the ultimate decision on who should win the "auction" is rigged to ensure that Mestek, the Debtor's current ultimate corporate parent, will prevail.

Three points illustrate the problems rife throughout the procedures proposed. First, the proposed bidding procedures do not indicate the amount of Mestek's as yet undisclosed proposed contribution: other bidders, other Debtor constituents, and this Court have no means of knowing

what the alternative funders are bidding against in this process. Second, the Debtor, which has a built-in conflict of interest by virtue of its status as Mestek, Inc.'s subsidiary, retains sole control over determining who qualifies to bid and which bid of any alternative plan funder, if any, should win. There is, therefore, no independent check on the Debtor in this evaluation or selection process. Third, the proposed bidding increments of $4,000,000 are clearly excessive under the circumstances so that they could only be seen as a design to, at the very best, discourage bidding and, at the very worst, compel the selection of Mestek, Inc. as the Plan funder regardless of whether or not Mestek's proposed contribution is the most beneficial to the Debtor.

FACTS

1. On August 26, 2003 (the "Petition Date"), Debtor Met-Coil Systems Corp. ("Met-Coil" or the "Debtor") commenced its reorganization case by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

2. The Debtor is continuing in possession of its properties and is operating and managing its business, as a debtor in possession, under sections 1107 and 1108 of the Bankruptcy Code.

3. On November 14, 2003, Honeywell filed proof of its general unsecured claim in an unliquidated amount in Debtor's chapter 11 proceeding. Honeywell's claim is premised upon indemnification rights it has pursuant to an indemnification agreement entered into between it and Debtor's corporate predecessor, the Lockformer Company ("Lockformer"). Specifically, in exchange for $800,000, which Honeywell paid to Lockformer and which was supposed to have been used to rectify certain contamination at a Lockformer facility in Lisle, Illinois (the "Lisle site"), Lockformer agreed to "defend hold harmless and indemnify Allied Signal [n/k/a

Honeywell] from all claims, demands, damages, expenses, costs, attorneys' fees, actions and liabilities of any kind and nature" relating to the contamination at the Lisle site.

4. In recent years, Honeywell, as well as Debtor and co-proponent Mestek, Inc. ("Mestek") have been named as defendants in actions alleging personal and property damages arising out of the contamination at, and allegedly migrating from, the Lisle site.

5. Honeywell's claim against the Debtor's estate arises from Debtor's contractual indemnification obligations. Honeywell believes that its claim falls within what has been defined as Class 4.1 Claims (General Unsecured Claims) in the Debtor and Mestek, Inc.'s *Chapter 11 Plan of Reorganization Proposed By Met-Coil Systems Corporation and Mestek, Inc. As Co-Proponents* (the "Plan"). Honeywell's claim, however, has been segregated from the Class 4.1 general unsecured claims and placed in its own separate class of claims; Class 4.4 Claims (Honeywell Claims).

6. On November 5, 2003, Debtor filed its proposed Disclosure Statement.

7. Honeywell filed its objections to the Disclosure Statement on December 3, 2003.

8. The hearing on Debtor's request for this Court's approval of the proposed Disclosure Statement is scheduled for December 10, 2003 at 10:30 a.m.

9. Debtor's proposed Plan is a "new value" plan. Under Debtor's "new value" Plan, Debtor proposes that its parent, Mestek, acquire equity in Debtor in exchange for certain consideration which supposedly provides additional value to the Debtor's estate.

10. Debtor's Plan also ostensibly seeks to ensure that Debtor is receiving fair and reasonably equivalent value under the Plan by requiring the Debtor – in its sole discretion – to review higher or better proposals than that which is being offered under the Plan, *i.e.* the bidding procedures.

11. Under the Plan, Debtor also retains sole authority to select the ultimate Plan funder, *i.e.* the selection procedures.

12. On November 24, 2003, Debtor filed a motion seeking approval of the bidding procedures; the selection procedures; and the form and notice of alternative plan procedures.

REQUIREMENTS FOR BIDDING PROCEDURES

13. According to the "absolute priority rule," a Debtor may not retain any value in its pre-petition equity unless its creditor claims are paid in full first. If the "new value" exception exists, then the Debtor's equity holders may retain their equity position if, put simply, they add fair value to the estate, which value is tested by a public auction or some other mechanism in accordance with § 363 of the Bankruptcy Code. *Bank of America v. 203 North LaSalle Street Partnership*, 526 U.S. 434 (1999).

14. That said, even in the event that an insider purports to add "new value" to the Debtor's estate, the Bankruptcy Code requires competitive bidding – either in the form of competing plans or of competing bids – which serve as a market valuation of all plans and bids. Such competitive bidding guarantees that the insider's proposed "new value" constitutes an actual and adequate benefit to the Debtor's estate. *203 North LaSalle Street Partnership*, 526 U.S. at 458.

15. In order to verify that the Debtor is receiving the highest and best value for its equity, the competitive bidding procedures a Plan provides for must be fair and may not have the effect of discouraging alternative bidders from bidding or favoring one bidder over another bidder. *See, e.g.*, *In re Joshua Slocum, Ltd.*, 99 B.R. 261, 264 (Bankr. E.D. Pa. 1989) (denying bidders' request to pre-qualify other bidders before they could engage in the bidding process because "[t]he courts have frowned upon procedures which have a chilling effect upon a bidding process.") (citing *In re Stanley Eng'g Corp.*, 164 F.2d 316, 219 (3d Cir. 1947)); *In re Twenver,*

Inc., 149 B.R. 954 (Bankr. D. Col. 1998) (rejecting proposed break up fee because it had the effect of chilling the bidding process).

OBJECTIONS TO THE PROPOSED BIDDING AND SELECTION PROCEDURES

16. Under the proposed bidding procedures, the Debtor purports to establish a fair auction procedure for the purpose of determining who the Plan funder will be. In reality, the Debtor, in derogation of its fiduciary obligations and under the compulsion of its corporate parent, has set up a rigged process designed to approve the pre-determined offer of Mestek. This Court should not countenance this cynical and brazen attempt to "game the system" and should require the Debtor to conduct a fair and open auction.

17. These procedures are more likely to ensure that Mestek will become the Plan funder – on its own terms – rather than, as is required by the Bankruptcy Code, generate actual competitive bidding. A bidder must conform strictly to certain qualifications that the Debtor and Mestek demand, whether or not these qualifications are necessary, after which it is the Debtor and Mestek which scrutinize the alternative bids. Potential bidders, and conveniently not Mestek, are required to deposit 10% of their total bid value, in cash, with the Court. Supposing a potential bidder is willing to acquiesce to these preposterous terms, it is the Debtor alone – without any input from creditors, the Legal Representative for Future Claimants, or this Court – which determines whether the potential bidder's bid is better than Mestek's undisclosed offer.

18. Examples of the unfair and inequitable nature of the procedures illustrate why they must be rejected. The bidding procedures do not identify the amount Mestek will contribute to the Plan so that any potential alternative plan sponsor cannot make a reasonable judgment as to whether or not it should submit alternative proposals, or, if they desire to submit an alternative proposal, what amount that proposal should be in in order to be considered by the Debtor.

Without this information, the bidding procedures are useless as they encourage nothing but speculative bidding, particularly in light of the dearth of financial information about the Debtor otherwise set forth in the proposed Disclosure Statement.

19. The bidding procedures are really illusory and are so wrought with internal conflict and bias that no true competitive bidding can functionally take place. Under the bidding procedures, Debtor, which has a built-in conflict, is the only entity with authority to qualify bidders or evaluate the bids of parties which seek to compete against Debtor's parent and favored Plan funder, Mestek, for the right to fund Debtor's Plan. Similarly, Debtor is the only entity with authority to select the winning bidder.

20. By not requiring the Debtor to confer with other interested parties in the evaluation and/or selection of the proposed plan funder, the bidding procedures in no way ensure that the best and highest bid is actually chosen by Debtor. Rather, the bidding procedures currently almost guarantee the selection of Mestek, regardless of whether Mestek is the best suited entity to do so. As discussed *supra* bypassing a true market test of the most valuable contribution to a debtor's plan is in derogation of the Bankruptcy Code. *C.f. In re Global Ocean Carriers Ltd.*, 251 B.R. 31, 48-49 (Bankr. D. Del. 2000) (Walrath, J.) (citing *Bank of America v. 203 N. LaSalle St. Partnership*, 526 U.S. 434 (1999)); *see also In re Edwards*, 228 B.R. 552 (Bankr. E.D. Pa. 1998) (explaining that the "purpose of bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate").

21. One of the most blatant and wholly unjustifiable illustrations of how biased and unfair these procedures are turns on what bidding increments are required. The bidding procedures require that an alternative potential plan sponsor bid in increments of $4,000,000. (Motion at ¶ 20(a)(iii)). Obviously, as this Court has no idea what Mestek's bid is or might be,

there is no way to ascertain whether this requirement is being applied with equal vigor to Mestek. Moreover, the bid increments of $4,000,000 as set forth in the bidding procedures are so excessive and unreasonable that they could only have the effect of discouraging a potential alternative plan sponsor from bidding at all. Procedures, such as the one described herein and which have the effect of chilling the bidding process, have been the basis for a court's refusal to approve of proposed bidding procedures. *See, e.g.*, *In re Joshua Slocum, Ltd.*, 99 B.R. 261, 264 (Bankr. E.D. Pa. 1989) (denying bidders' request to pre-qualify other bidders before they could engage in the bidding process because "[t]he courts have frowned upon procedures which have a chilling effect upon a bidding process.") (citing *In re Stanley Eng'g Corp.*, 164 F.2d 316, 219 (3d Cir. 1947)); *In re Twenver, Inc.*, 149 B.R. 954 (Bankr. D. Col. 1998) (rejecting proposed break up fee because it had the effect of chilling the bidding process). In fact, Honeywell challenges the Debtor to point to a single set of approved bidding procedures where the bidding increments are so high.

WHEREFORE, Honeywell requests that the Court deny approval of the bidding and selection procedures because they are not confirmable as a matter of law.

Dated: Wilmington, Delaware
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