

**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.)	Objection Deadline: July 26, 2004 @ 12:00 noon
)	(Requested)
)	Hearing Date: July 28, 2004 @ 11:30 a.m.
)	(Requested)

**DEBTOR'S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH ACE
PURSUANT TO BANKRUPTCY CODE § 105 AND BANKRUPTCY RULE 9019**

Met-Coil Systems Corporation, as debtor and debtor in possession ("**Met-Coil**" or the "**Debtor**"), hereby moves this Court (the "**Motion to Approve**") for entry of an order approving that certain "Confidential Settlement Agreement and Release" (the "**Settlement Agreement**") by and among the Debtor, Mestek, Inc., the Debtor's indirect parent ("**Mestek**"), Formtek, Inc., the Debtor's parent ("**Formtek**"), and Pacific Employers Insurance Company and Westchester Fire Insurance Company¹ (collectively, "**ACE**", and together with the Debtor, Mestek and Formtek, the "**Parties**") pursuant to § 105 of the United States Bankruptcy Code (the "**Bankruptcy Code**") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"). In support of the Motion to Approve, the Debtor respectfully states as follows:

¹ In previous pleadings, including the Disclosure Statement, Westchester was referred to as "International Insurance Company". Although the policies at issue were originally issued by International Insurance Company, a different related company, Westchester Fire Insurance Company, is now responsible for coverage issues related to the policies at issue and is the entity authorized to enter into the Settlement Agreement with respect to the policies issued by International Insurance Company.

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. Consideration of this Motion to Approve is a core proceeding pursuant to 28 U.S.C. § 157(b)(A).

2. The predicates for the relief requested herein are § 105 of the Bankruptcy Code and Bankruptcy Rule 9019.

INTRODUCTION

3. On August 26, 2003 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. The Debtor is operating its business as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors (the "**Committee**") has been appointed.

5. On June 22, 2004, the Bankruptcy Court entered an Order approving the Fourth Amended Disclosure Statement Pursuant To Section 1125 Of The Bankruptcy Code For The Fourth Amended Chapter 11 Plan Of Reorganization Proposed By Met-Coil Systems Corporation And Mestek, Inc., As Co-Proponents (the "**Disclosure Statement**") as having adequate information pursuant to § 1125 of the Bankruptcy Code. Exhibit A to the Disclosure Statement is the Fourth Amended Chapter 11 Plan of Reorganization Proposed By Met-Coil Systems Corporation and Mestek, Inc. dated June 22, 2004 (as may be amended or modified, the "**Plan**").

6. The Debtor has been involved in several lawsuits over the alleged release of trichloroethylene ("**TCE**") into the soil at its facility in Lisle, Illinois (the "**Lisle Facility**").

The Lisle Facility is operated by one of the Debtor's operating divisions, The Lockformer Company ("**Lockformer**").

7. On July 19, 2004, the Debtor, Mestek, Formtek and ACE entered into the Settlement Agreement, subject to Bankruptcy Court approval of such agreement and the Plan containing a channeling injunction.² The Settlement Agreement resolves the insurance coverage provided by the Policies for the lawsuits involving the alleged release of TCE at the Lisle Facility.

8. ACE also is a party to the Travelers Casualty & Surety Co. v. Met-Coil Systems Corp. matter, currently pending in the United States District Court for the Northern District of Iowa ("Iowa District Court") (Case No. 03-C-119) (the "**Lawsuit**"). In January 2003, Travelers Casualty and Surety Company, The Travelers Indemnity Company, The Travelers Indemnity Company of Illinois n/k/a Travelers Property Casualty Company of America and Gulf Insurance Company ("**Travelers**") filed the Lawsuit against Met-Coil, Mestek and certain Met-Coil insurers, including ACE. Travelers assert claims against ACE and the other defendant insurers with whom Met-Coil and Mestek have settled for contribution. In February 2003, ACE filed its Answer to the Complaint, crossclaims against defendants Columbia Casualty Company, Employers Insurance of Wausau, General Accident Insurance Company, Hartford Accident & Indemnity Company, National Union Fire Insurance Company of Pittsburgh, PA, New Hampshire Insurance Company, One Beacon Insurance Company, Potomac Insurance Company, Twin City Fire Insurance Company and Unigard Insurance Company and a counterclaim against Travelers. The crossclaims and counter-claim filed by ACE assert that the Debtor is required to

² Mestek and Formtek contend they are insureds under the insurance policies with ACE at issue herein and the Settlement Agreement. To effectuate the settlement with ACE, Mestek and Formtek are required to release ACE of any rights under such insurance policies. Ultimately, if this settlement motion is approved, Mestek and Formtek will release their rights, if any, to proceeds of the settlement with ACE if Mestek is the Winning Plan Sponsor.

exhaust all primary insurance coverage before it can obtain coverage under the Policies. Therefore, “under the common law theories of equitable contribution and/or unjust enrichment,” ACE seeks reimbursement or contribution from the Debtor’s other insurers for any payments it is required to make. Due to numerous agreed stays entered by the Iowa District Court, no party has answered ACE’s crossclaim or counter-claim.

9. The Parties desire to amicably resolve the Lawsuit and any disputes among them with regard to the Lawsuit or the Policies. Specifically, the Parties have agreed to settle the issues among them as set forth in the Settlement Agreement, a copy of which is attached hereto as Exhibit A. Contemporaneously herewith, the Debtor filed its Motion for Leave Pursuant To Bankruptcy Code § 107 and Bankruptcy Rule 9018 To File *Under Seal Exhibit A To Its Motion To Approve Settlement Agreement Pursuant to Bankruptcy Code § 105 and Bankruptcy Rule 9019 ("Motion to File Under Seal")*. As provided for in the Settlement Agreement, the Debtor will be providing a copy of the Settlement Agreement to the Committee, the future claimants' representative and the United States Trustee, provided that those parties have entered into appropriate confidentiality agreements.

10. Without disclosing the confidential terms, the Settlement Agreement provides for ACE to make a cash payment to the Debtor in consideration for which ACE, on the one hand, and the Debtor, Mestek and Formtek, on the other hand, have agreed to a mutual release with regard to the Lawsuit and the Policies, and ACE is to receive the benefits of the release, discharge and channeling injunction as set forth in the Plan. The effectiveness of the Settlement Agreement is conditioned upon, among other things, entry of a final non-appealable confirmation order in form satisfactory to the Debtor, Mestek and ACE which contains, among other things, approval of the channeling injunction.

RELIEF REQUESTED

11. By this Motion, the Debtor seeks entry of an order pursuant to § 105 of the Bankruptcy Code and Bankruptcy Rule 9019 approving the Settlement Agreement and authorizing it to enter into the Settlement Agreement. Approving the Settlement Agreement and providing the Debtor with the authority to enter into the Settlement Agreement is clearly beneficial to the Debtor's estate and its creditors, as it provides necessary funds for the Plan, and at the same time, resolves claims of the Debtor's estate against ACE as well as ACE's claims against the Debtor's estate.

BASIS FOR RELIEF REQUESTED

12. Section 105(a) of the Bankruptcy Code provides that "[t]he court may issue any order ... that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105.

13. Bankruptcy Rule 9019 provides, in pertinent part, that, "on motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019. Under this authority, the Third Circuit has emphasized that "to minimize litigation and expedite the administration of a bankruptcy estate, '[c]ompromises are favored in bankruptcy.'" Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996) (quoting 9 Collier on Bankruptcy ¶ 9019.03[1] (15th ed. 1993)). In addition, this District has recognized that the approval of a proposed compromise and settlement is committed to the sound discretion of the bankruptcy court. See In re Louise's, Inc., 211 B.R. 798, 801 (D. Del. 1997).

14. Before approving a settlement under Bankruptcy Rule 9019, a court must determine whether "the compromise is fair, reasonable, and in the interest of the estate." In re Marvel Entertainment Group, Inc., 222 B.R. 243, 249 (D. Del. 1998) (quoting Louise's, 211 B.R.

at 801). To reach such a determination, the court must assess the value of the claim that is being settled and balance it against the value to the estate of the approval of the settlement. Martin, 91 F.3d at 393. In striking the balance, a court should consider four criteria: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." Martin, 91 F.3d at 392; see also Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968).

15. Generally, a bankruptcy court should defer to the debtor's judgment so long as there is a legitimate business justification for entering into the settlement. Martin, 91 F.3d at 395; see also TMT Trailer Ferry, 390 U.S. at 424-25 (basic to the process of evaluating proposed settlements is "the need to compare the terms of the compromise with the likely rewards of litigation"). Under TMT Trailer Ferry, the Court is not required to hold a full evidentiary hearing before a compromise can be approved; rather, the Court's obligation is "to canvass the issues and see whether the settlement 'falls below the lowest point in a range of reasonableness.'" 10 Collier on Bankruptcy ¶ 9019.02, 9019-4 to 9019-5 (15th ed.) (quoting In re Drexel Burnham Lambert Group, Inc., 134 B.R. 493, 497 (Bankr. S.D.N.Y. 1991); (quoting Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir.), cert. denied, 464 U.S. 822 (1983)).

16. Applying the standard set forth in Martin and TMT Trailer Ferry, this Court should approve the Settlement Agreement. First, ACE asserts there is no coverage available under the policies for defense or indemnity costs incurred by the Debtor. Second, the Debtor would have to assert claims against ACE and, as with all litigation, the outcome of that lawsuit would not be certain and success would not be guaranteed. Third, the Debtor has

determined in its sound and reasonable business judgment that its creditors will benefit from the Settlement Agreement because the settlement will bring a significant contribution to the estate, and eliminate the expenses that the Debtor would be required to incur to continue to litigate the matters at issue. Specifically, the settlement amount from ACE is necessary to ensure that sufficient funding exists for distributions to be made under the Plan, including to the TCE PI Trust (as defined in the Plan). In order to effectuate the settlement with ACE and thus obtain the funds that the settlement provides, the channeling injunction under the Plan must be approved. Fourth, the Settlement Agreement represents a fair and equitable result to all parties in interest of the disputes at issue.

17. The Settlement Agreement is the result of good faith negotiations among the Parties, and the resultant settlement is in the best interests of the Debtor's creditors and estate. It will also provide a portion of the funding for the Debtor's plan of reorganization, including funding for known and unknown, and present and future TCE personal injury claims. Accordingly, the Settlement Agreement should be approved.

NOTICE

18. Notice of this Motion to Approve has been given to (a) the Office of the United States Trustee for the District of Delaware; (b) counsel for the Debtor's secured lender; (c) counsel for the Committee; (d) counsel for ACE; (e) counsel for the future claimants' representative; (f) all parties that have requested notice of pleadings pursuant to Bankruptcy Rule 2002; and (g) all remaining creditors of the Debtor asserting a claim through either the Debtor's Schedules or a filed proof of claim that has not been disallowed.³

³ The Debtor gave notice of this motion to these parties by sending a notice to the parties that received a solicitation package mailed on June 25, 2004, that this motion would be filed on or about July 8, 2004. Although the Debtor is filing this motion after July 8, 2004, all of the parties were advised through the notice that the motion could be obtained by contacting the Debtor's counsel or obtaining a copy from the Bankruptcy Court's website. Although the

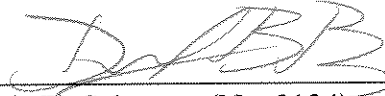
NO PRIOR REQUEST

19. No previous request for the relief sought in this Motion to Approve has been made to this Court or any other court.

WHEREFORE, the Debtor respectfully requests the Court enter an order: (a) approving the Settlement Agreement with ACE pursuant to Bankruptcy Code § 105 and Bankruptcy Rule 9019; and (b) granting such other and further relief as is just and proper.

Dated: July 21, 2004

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motion was not available on the Bankruptcy Court's website until July 21, 2004, no party contacted the Debtor's counsel with respect to such motion.