

**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) Objection Deadline: December 3, 2003 at 4:00 p.m. Hearing Date: December 10, 2003 at 10:30 a.m.</p>
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**TRAVELERS' MOTION TO DEFER RULING
RE: DOCKET NO. 196**

Travelers Casualty and Surety Company, formerly known as The Aetna Casualty and Surety Company, and The Travelers Indemnity Company of Illinois (collectively "Travelers"), hereby move for this Court to defer ruling on Met-Coil Systems Corporation's ("Debtor") Motion to Assume Settlement, or in the Alternative, to Approve Settlement ("Motion to Assume"). In support of this Motion, Travelers states as follows:

I. INTRODUCTION

1. Debtor's Motion to Assume is premature. Bankruptcy courts should not resolve questions involving the existence, enforceability or validity of a contract in the context of deciding whether to permit the trustee or debtor-in-possession to assume a contract. See e.g., Orion Pictures Corp. v. Showtime Networks, Inc., 4 F.3d 1095, 1099 (2nd Cir. 1993). Although Travelers and Debtor agree that Travelers, Debtor and Debtor's non-debtor parent corporation Mestek, Inc. ("Mestek") reached a fully enforceable settlement on April 28, 2003, Mestek somehow disputes the existence, enforceability and/or validity of the settlement. These contract issues are currently subject to two separate actions that have been removed by the Debtor from the state courts to the Northern District of Illinois and Northern District of Iowa respectively. Hearing on the issue of the enforceability of the settlement between Travelers, Debtor and

Mestek was originally set for hearing in the Illinois state court action on November 24, 2003.

Travelers has filed a Motion for Abstention and Remand of those actions back to the state courts for prompt ruling. Until such time as the disputed contractual issues are resolved (a predicate to assumption), it is improper for this Court to address the assumption of the settlement agreement. Therefore, this Court should defer ruling on Debtor's Motion to Assume until the disputed contractual issues between Travelers, Debtor and Mestek are resolved.

2. The issues of the validity, enforceability and existence of the settlement are not before this Court. Travelers has not filed a proof of claim, and by its Motions for Abstention and Remand, expressly contested the appropriateness of having the issues determined by this Court. Apparently acknowledging that the Motion to Assume is premature, Debtor has sought to bring the contract issues before this Court by removing the state court actions to federal court and then filing a motion to transfer venue to this Court. In response, Travelers filed its Motions for Abstention and Remand on the grounds that the state law contract dispute between Travelers, Debtor and Mestek is a non-core proceeding, the resolution of which is best left to state courts. 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); Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50, 84, 102 S. Ct. 2858 (U.S. 1982). The District Court for the Northern District of Illinois has already ruled that the Motion for Abstention and Remand must be heard prior to the Debtor's motion to transfer venue of the matter to this Court.¹ Only upon a denial of Travelers' Motion for Abstention and Remand and a subsequent granting of the Debtor's motion to transfer venue (which will not be heard until after the Motion for Abstention and Remand) would the issue of existence, enforceability and validity of the settlement agreement be before

¹ A Motion for Abstention and Remand has also been filed in the Northern District of Iowa. However, Debtor has not filed a motion to transfer venue in the Iowa action as of the date of filing of this Motion.

this Court. Accordingly, this Court should defer ruling on the Motion to Assume pending the outcome of the proceedings in other courts.

3. Moreover, in submitting this Motion to Defer, Travelers respectfully requests that hearing on Debtor's Motion to Assume be re-scheduled, and that Travelers be given the opportunity to respond to Debtor's Motion to Assume, once Travelers' Motions for Abstention and Remand and the disputed contractual issues are resolved.

II. FACTUAL BACKGROUND

4. Debtor and Mestek seek insurance coverage from Travelers for alleged environmental liabilities arising out of the operations of Debtor's Lockformer Division in Lisle, Illinois. Travelers initiated a declaratory judgment action in the Iowa District Court in and for Linn County as a continuation of an action that was originally filed in February of 2001 (the "Iowa Action"). Debtor and Mestek initiated a competing declaratory judgment action in the Circuit Court for the 18th Judicial Circuit in DuPage County, Illinois (the "Illinois Action"). Travelers was named as a Defendant in the Illinois Action in June of 2002.

5. On April 28, 2003, Travelers, Debtor and Mestek reached a final settlement of their insurance coverage dispute, pursuant to which Travelers agreed to pay Debtor and Mestek a significant amount of money. Although the agreement was not executed, it is fully enforceable under either Illinois or Iowa law. Travelers and Debtor agree that the settlement is valid, binding and enforceable. On the other hand, Mestek now seeks to avoid its contractual obligations under the settlement, under the guise that Debtor's recent bankruptcy filing somehow relieves it of its contractual obligations. Mestek will undoubtedly seek to assert contested contract issues as grounds to deny assumption of the settlement.

6. Travelers filed similar Motions to Enforce Settlement in the Illinois Action and

the Iowa Action on August 25, 2003 and October 3, 2003, respectively. Travelers' Motion to Enforce Settlement was scheduled for oral argument in the Illinois Action on November 24, 2003. Resolution of these Motions will bind Mestek to the settlement and render the settlement an appropriate contract for assumption, which Travelers supports.

7. On October 14, 2003, Debtor filed a Notice of Removal in the Illinois Action, thereby removing the case to the United States District Court for the Northern District of Illinois. On the same date, Debtor filed a Notice of Removal in the Iowa Action, thereby removing the case to the United States District Court for the Northern District of Iowa.

8. On October 17, 2003, Debtor filed a Motion to Transfer the Illinois Action from the United States District Court for the Northern District of Illinois to this Court, where Debtor's bankruptcy proceedings are pending.

9. On October 20, 2003, Debtor filed its Motion to Assume before this Court, in which Debtor explicitly states that the settlement between Travelers, Debtor and Mestek is valid, binding and enforceable. Pursuant to Stipulation, Objections to the Motion to Assume were originally due on November 26, 2003, Debtor's Reply in support of the Motion to Assume were originally due on December 5, 2003, and oral argument on the Motion to Assume was originally scheduled for December 10, 2003 at 10:30 a.m. EST.

10. On October 22, 2003, the parties appeared before United States District Judge St. Eve in the Illinois Action, at which time Travelers informed Judge St. Eve of its intentions to file a Motion for Abstention and Remand. Thereafter, Judge St. Eve ruled that Travelers' Motion for Abstention and Remand would be addressed prior to addressing Debtor's Motion to Transfer Venue. In addition, Judge St. Eve ordered Travelers to file its Motion for Abstention and Remand on or by October 28, 2003.

11. On October 24, 2003, Travelers filed its Bankruptcy Rule 9027(e)(3) Statements in response to the Notice of Removal in both the Illinois Action and the Iowa Action. On October 27, 2003, Travelers filed a Motion for Referral to Bankruptcy Judge in the Illinois Action, pursuant to Northern District of Illinois Internal Operating Procedure 15.

12. On October 28, 2003, Travelers filed Motions for Abstention and Remand in the Illinois Action and in the Iowa Action, based on the fact that the state law contract dispute between Travelers, Debtor and Mestek is a non-core proceeding, the resolution of which is best left to state courts.

13. On November 5, 2003, Travelers filed a Motion for Referral to Bankruptcy Judge in the Iowa Action, pursuant to Northern District of Iowa Administrative Order 927.

14. On November 6, 2003, Judge St. Eve granted Travelers' Motion for Referral to Bankruptcy Judge in the Illinois Action. Travelers' Motion for Abstention and Remand will thus be resolved by a bankruptcy judge in the United States Bankruptcy Court for the Northern District of Illinois.

III. ARGUMENT AND ANALYSIS

A. The Validity, Enforceability And Existence Of The Settlement Between Travelers, Debtor And Mestek Must Be Addressed Before The Bankruptcy Court Can Address Debtor's Motion To Assume

15. Debtor filed its Motion to Assume, in spite of the fact that a court has yet to adjudicate the validity, enforceability and existence of the settlement between Travelers, Debtor and Mestek. Courts confronted with this very situation have consistently held that disputed contractual issues must be resolved before a bankruptcy court can adjudicate a motion to assume. Orion, 4 F.3d at 1099; In Re Adelpia Communications Corp., 280 B.R. 63, 84 (Bankr. S.D.N.Y. 2002)(motions to assume and similar motions are ill-suited to making determinations on the

merits of contractual disputes); In Re Adelpia Communications Corp., 291 B.R. 283, 301 (Bankr. S.D.N.Y. 2003)(noting that motion to assume is not an appropriate vehicle for addressing matters that dramatically affect substantive contractual rights); In Re III Enterprises, Inc., 163 B.R. 453, 459 (Bankr. E.D. Pa. 1994)(before the Debtor can assume a contract, there must be a contract to assume, reject or enforce); Big Rivers Electric Corp. v. Green River Coal Co. Inc., 182 B.R. 751, 756 (W.D. Kent. 1995)(the bankruptcy court cannot adjudicate the validity and enforceability of a contract by way of a motion to assume); In Re Docktor Pet Center, Inc., 144 B.R. 14, 17 (Bankr. D. Mass. 1992)(motion to assume is not the place for an extended contract suit).

16. In Orion, the Second Circuit concluded that the bankruptcy court erred in deciding disputed contractual issues in the context of deciding a motion to assume. Orion, 4 F.3d at 1097. In reaching this decision, the court found that the bankruptcy court misapprehended the fundamental nature and purpose of a motion to assume. Id. at 1098. The court stated:

At heart, a motion to assume should be considered a summary proceeding, intended to efficiently review the trustee's or debtor's decision to adhere to or reject a particular contract in the course of the swift administration of the bankruptcy estate. It is not the time or place for prolonged discovery or a lengthy trial with disputed issues... In reviewing a trustee's or debtor-in-possession's decision to assume an executory contract, then, a bankruptcy court sits as an overseer of the wisdom with which the bankruptcy estate's property is being managed by the trustee or debtor-in-possession, and not, as it does in other circumstances, as the arbiter of disputes between creditors and the estate.

Id. at 1098-99.

17. In reaching its decision, the Orion court also ruled that it was erroneous for the bankruptcy court to resolve questions involving the validity of the contract at issue in the context of addressing the motion to assume, stating:

Although several bankruptcy courts have read § 365 as authorizing them to resolve questions involving the validity of contracts before deciding whether to permit the trustee

or debtor-in-possession to assume the contracts, we believe that nothing in § 365 provides such authorization. [Citations omitted].

Id. at 1099.

18. Orion has been followed by courts in the Third Circuit. In In Re III Enterprises, Inc., the United States Bankruptcy Court for the Eastern District of Pennsylvania ruled that a bankruptcy court could not address a motion to assume or reject until the issue of whether a valid contract exists is resolved, stating:

It is elementary to observe that, before the Debtor can assume or reject a contract, or, for that matter, before [the creditor] can seek to enforce a contract, there must be a contract to assume, reject or enforce... 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., 163 B.R. at 459.

19. Based on this precedent, there is no question that this Court should defer ruling on Debtor's Motion to Assume until the existence, enforceability and validity of the settlement between Travelers, Debtor and Mestek is adjudicated. Put simply, before Debtor can even assume the settlement, there must be a settlement to assume. The issue of the existence and enforceability of the settlement is essential to and a precondition of an adjudication of the Motion to Assume. As the existence, enforceability and validity of the settlement between Travelers, Debtor and Mestek has yet to be resolved, Debtor's Motion to Assume is premature. Consequently, this Court should defer ruling on Debtor's Motion.

B. The Adjudication Of The Validity, Enforceability and Existence Of The Settlement Between Travelers, Debtor and Mestek Is Not Before This Court.

20. The issues involving validity, enforceability and existence of the settlement agreement are not before this Court, and the Debtor's bankruptcy proceeding is not the appropriate forum for adjudication of the validity, enforceability and existence of the settlement between Travelers, Debtor and Mestek. In Re III Enterprises, Inc. provides an illustration of the

limited circumstances when a bankruptcy court should resolve disputed contractual issues before addressing a motion to assume. In In Re III Enterprises, Inc., the bankruptcy court addressed the validity, enforceability and existence of the contract at issue before addressing the debtor's motion to assume or reject. In Re III Enterprises, Inc., 459-468. However, the bankruptcy court only did so because it had been informed that the entire contract dispute between the debtor and the creditor was being transferred to it. In Re III Enterprises, Inc., 163 B.R. at 458, n.2. Additionally, the creditor in In Re III Enterprises, Inc. essentially conceded that the bankruptcy court could adjudicate the validity, enforceability and existence of the contract at issue and whether the contract was assumable. Id. at 458. Therefore, it was appropriate for the bankruptcy court to address the disputed contractual issues before addressing the motion to assume or reject.

21. The dispute currently before this Court presents the opposite side of the spectrum, as compared to the situation in In Re III Enterprises, Inc. Specifically, Travelers opposes the transfer of the present contract dispute to this Court. In response to the Debtor's removal of the contract actions to federal court and motion to transfer venue to this Court, Travelers filed its Motions for Abstention and Remand and asked that those motions be decided prior to addressing the Debtor's transfer motion. The District Court for the Northern District of Illinois agreed that the Motion for Abstention and Remand must be decided prior to the Debtor's transfer motion and referred the entire matter to the Bankruptcy Court for the Northern District of Illinois. Accordingly, the contract issues that must be decided prior to the Motion to Assume currently are not before this Court. Unless and until that court ultimately grants Debtor's transfer motion (which cannot occur unless Traveler's Motion for Abstention and Remand is first denied), the predicate contract issue is not before this Court.

22. More importantly, this state law contract dispute between Travelers, Debtor and Mestek is a non-core proceeding, the resolution of which is best left to state courts. Travelers has not sought the benefit of this Court's core jurisdiction by way of a proof of claim, and it does not intend to do so. Accordingly, the bankruptcy court is not the appropriate forum for resolving the validity, enforceability and existence of the settlement between Travelers, Debtor and Mestek. Marathon Pipe Line Co., 458 U.S. at 84 (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); Orion, 4 F.3d at 1102 (same). Rather, such a determination is best left to state courts. Therefore, in addition to deferring ruling on Debtor's Motion to Assume, this Court should defer to the state courts for a ruling on the validity, enforceability and existence of the settlement between Travelers, Debtor and Mestek.

IV. CONCLUSION

23. Travelers' Motion to Defer should be granted. Bankruptcy courts may not resolve non-core matters involving the validity, existence and enforceability of contracts in the context of deciding whether to permit the trustee or debtor-in-possession to assume a contract. Rather, disputed contractual issues must be resolved before a bankruptcy court can address a motion to assume. Therefore, this Court should defer ruling on Debtor's Motion to Assume until the disputed contractual issues between Travelers, Debtor and Mestek are promptly resolved in state court.

24. The contract issues are not before this Court. Travelers has not sought the benefit of the jurisdiction of this Court, and indeed, has filed Motions for Abstention and Remand. The state law contract dispute between Travelers, Debtor and Mestek is a non-core proceeding, the

resolution of which is best left to state courts. Unless and until the contract matters are properly transferred to this Court, it should defer to the state courts for a ruling on the disputed contractual issues between Travelers, Debtor and Mestek.

25. Moreover, Travelers respectfully requests that hearing on Debtor's Motion to Assume be re-scheduled, and that Travelers be given the opportunity to respond to Debtor's Motion to Assume, once Travelers' Motions for Abstention and Remand and the disputed contractual issues are resolved.

Respectfully submitted,

Dated: November 14, 2003
Wilmington, Delaware

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CERTIFICATE OF SERVICE

I, Tobey M. Daluz, Esquire hereby certify that on this 14th day of November, 2003, I caused a true and correct copy of the foregoing Motion to Defer Ruling to be served on the following service list in the manner indicated:

Dated: November 14, 2003
Wilmington, Delaware

/s/ Tobey M. Daluz
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