

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.)

DEBTOR'S OBJECTION TO THE APPLICATION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR AN ORDER PURSUANT TO SECTIONS 1103(a) AND 328(a) OF THE BANKRUPTCY CODE AUTHORIZING AND APPROVING THE EMPLOYMENT AND RETENTION OF BEDERSON & CO. LLP, AS SPECIAL ENVIRONMENTAL FINANCIAL CONSULTANTS TO THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS NUNC PRO TUNC TO OCTOBER 9, 2003 [D.I. 239]

The above-captioned debtor and debtor-in-possession (the "Debtor"), by and through its undersigned counsel, hereby objects (the "Objection") to the Application Of The Official Committee Of Unsecured Creditors (the "Committee") For An Order Pursuant To Sections 1103(a) And 328(a) Of The Bankruptcy Code Authorizing And Approving The Employment And Retention Of Bederson & Co. LLP ("Bederson"), As Special Environmental Financial Consultants To The Official Committee Of Unsecured Creditors Nunc Pro Tunc To October 9, 2003 (D.I. 239) (the "Bederson Application"), and in support hereof, respectfully states as follows:

Background

1. On August 28, 2003 (the "Petition Date"), the Debtor filed a voluntary petition for reorganization relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").
2. The Debtor is operating as a debtor-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee or examiner has been appointed.

3. On September 11, 2003, the United States Trustee (the “Trustee”) for this region appointed the Committee. The Committee consists of four creditors. Three are trade creditors with claims ranging from \$17,295 to \$51,536. The fourth, Groundwater Services, is an environmental consulting firm that the Debtor hired in connection with the tort litigation that precipitated this bankruptcy.

4. On September 18, 2003, the Committee filed its Application To Approve The Retention Of Klehr, Harrison, Harvey Branzburg & Ellers LLP (“Klehr”) As Counsel To The Official Committee Of Unsecured Creditors (D.I. 96) (the “Klehr Application”). According to the Klehr Application, Klehr’s duties include:

- (b) assisting the Committee in analyzing the operation of the Debtor’s business and the desirability of the continuance of such business and other matters; (c) assisting the Committee in investigating the acts, conduct, assets, liabilities and financial condition of the Debtor. . . (i) advising the Committee and otherwise participating in formulating a chapter 11 plan or plans . . .

(Klehr Application, p. 2). The Court approved the Klehr Application by Order dated October 20, 2003 (D.I. 201).

5. On September 22, 2003, the Committee filed its Application For An Order Pursuant To Sections 1103(a) And 328(a) Of The Bankruptcy Code Authorizing And Approving The Retention And Employment Of Parente Randolph, LLC (“Parente”) As Accountants And Financial Advisors To The Official Committee Of Unsecured Creditors Nunc Pro Tunc To September 15, 2003 (D.I. 106) (the “Parente Application”). According to the Parente Application, Parente performs certain tasks for the Committee, including:

- (g) [a]ssist the Committee in its investigation of the acts, conduct, assets, liabilities, and financial condition of the Debtor, the operation of Debtor’s businesses, and the desirability of the continuation of such businesses . . . (i) [I]nvestigate and analyze on behalf of the Committee the Debtor’s financial operations, related-party transactions and accounts, inter-company transfers and asset recovery potential . . . (k) [a]ssist and advise the Committee and its counsel in the development, evaluation and documentation of any plan of reorganization

or plan of liquidation . . . (l) [a]ssist the Committee in the evaluation of a proposed sale, if any, and related procedures under §363 of the Bankruptcy Code . . .

(Parente Application, p. 3-4). The Court approved the Parente Application by Order dated October 20, 2003 (D.I. 204).

6. On September 22, 2003, the Debtor filed the Application Pursuant To 11 U.S.C. §§ 105 And 1109 For The Appointment Of Eric D. Green (the “Future Claims Representative”) As Legal Representative For Future Claimants (D.I. 110) (the “Future Claimants Representative Application”). As set forth in the Future Claimants Representative Application, the purpose of appointing the Future Claims Representative is to “protect the rights and interests of . . . persons who may have claims or demands against Met-Coil or other third parties arising after the Petition Date as a result of the alleged release of TCE (the “Future Claimants”). . .”. (Future Claimants Representative Application, p. 3). The Court approved the Future Claimants Representative Application by Order dated October 20, 2003 (D.I. 205).

7. On November 4, 2003, the Committee filed the Bederson Application. In the Bederson Application, the Committee correctly notes that resolution of this case will require the resolution of personal injury and property damage claims (the “TCE Claims”) arising from the alleged TCE contamination by the Debtor. (Bederson Application, ¶ 5). However, the Committee offers no explanation as to how or why Bederson would be necessary or helpful to the Debtor’s intendance of the TCE Claims.

8. Rather than justifying why the Debtor should be forced to eventually compensate a second financial advisor to the Committee, the Bederson Application instead provides a litany of tasks to be performed by Bederson, largely mimicking tasks to be performed by Parente in the Parente Application. As set forth in the Bederson Application, Bederson will:

(b) Assist the Committee in evaluating the Debtor’s financial projections . . . based upon the Debtor’s environmental liabilities; (c) Investigate and analyze . .

the Debtor's financial operations, related party transactions and accounts, inter-company transfers and asset recovery potential with regard to the Debtor's environmental liabilities; (d) Assist and advise the Committee and its counsel in the development, evaluation and documentation of any plan of reorganization or plan of liquidation . . . (e) Assist the Committee in the evaluation of the Debtor's environmental liabilities in connection with a proposed sale . . .

(Id. at ¶ 9). The Bederson Application does not, however, explain what contribution Bederson will make, especially in light of the facts that the Committee already employs one financial advisor, and that the Future Claimants Representative has been appointed to protect the rights of the Future Claimants. Moreover, it does not appear that Bederson has special competence to serve as an "environmental financial consultant." In fact, Bederson's website, www.Bederson.com, nowhere claims any expertise in environmental matters. A copy of the portion of the website that describes Bederson's services is attached as Exhibit A hereto. Finally, even if Bederson had any special expertise, the Committee does not need an "environmental financial consultant."

Objection

9. The Debtor objects to the Bederson Application because employment of Bederson would be unreasonable in this case. The Committee's retention of Bederson is neither necessary, reasonable, nor in the best interests of the Debtor's estate. Rather, employment and compensation of Bederson amounts to an unnecessary cost: it would be wasteful given that Parente already provides accounting and financial advisory services to the Committee. Indeed, the Debtor has not even employed a financial advisor.

10. Bankruptcy Code section 328(a) requires that if a committee desires to employ a professional to be compensated with estate resources, such employment must be on "reasonable terms and conditions". 11 U.S.C. § 328(a). Among the factors to be considered in gauging 'reasonableness' is "whether the retention, as proposed, is in the best interests of the

estate. . .”. In re Insilco Technologies, Inc., 291 B.R. 628, 634 (Bankr. D. Del. 2003) (citing United Artists Theatre Co. v. Walton (In re United Artists Theatre Co.), 315 F.3d 217, 238 n. 4 (3d Cir. 2003)).

11. Employing Bederson would be unreasonable because the Committee already employs a financial advisor, and because the Court has already appointed the Future Claims Representative to attend to the rights of the Future Claimants. Given these facts, the activities of Bederson will be largely duplicative of those of Parente.

12. One need only examine the professional services to be rendered by Bederson and Parente, as set forth in the Bederson Application and the Parente Application, to reach this conclusion. Examples of identical tasks to be performed by Parente and Bederson abound, including the following:

- Bederson is to “[a]ssist the Committee in evaluating the Debtor’s financial projections and test the reasonableness of the assumptions used in developing the same based on the Debtor’s environmental liabilities” (Bederson Application, ¶ 9(b)); while Parente is to “[a]ssist the Committee in evaluating the Debtor’s financial projections and test the reasonableness of the assumptions used in developing the same” (Parente Application, p. 3).
- Bederson is to “[a]ssist and advise the Committee and its counsel in the development, evaluation and documentation of any plan of reorganization or plan of liquidation, including developing, structuring and negotiating the terms and conditions of such plan of reorganization or plan of liquidation and the value of consideration that is to be provided to unsecured creditors” (Bederson Application, ¶ 9(d)); and Parente will “[a]ssist and advise the Committee and its counsel in the development, evaluation and documentation of any plan of reorganization or plan of liquidation, including developing, structuring and negotiating the terms and conditions of such plan of reorganization or plan of liquidation and the value of consideration that is to be provided to unsecured creditors” (Parente Application, p. 3).
- Bederson is to “[I]nvestigate and analyze on behalf of the Committee the Debtor’s financial operations, related-party transactions and accounts, inter-company transfers and asset recovery potential with regard to the Debtor’s environmental liabilities” (Bederson Application, ¶ 9(c)); while Parente will “[I]nvestigate and analyze on behalf of the Committee the Debtor’s financial

operations, related-party transactions and accounts, inter-company transfers and asset recovery potential” (Parente Application, p. 3).

- Bederson is to “[a]ssist the Committee in the evaluation of the Debtor’s environmental liabilities in connection with a proposed sale, if any, and related procedures under § 363 of the Bankruptcy Code, including identification of potential buyers (Bederson Application, ¶ 9(e)); while Parente will “[a]ssist the Committee in the evaluation of a proposed sale, if any, and related procedures under § 363 of the Bankruptcy Code, including identification of potential buyers” (Parente Application, p. 4).

13. To the extent the Committee needs expertise, one of its members, Groundwater Services, is undoubtedly more qualified to provide it than Bederson.

14. The Debtor is undertaking to reorganize and emerge from chapter 11 as efficiently and as cost-effectively as possible, with the concerns of each of the Debtor’s creditor classes in mind. The interests of the Future Claimants are adequately protected by the Future Claimants Representative. Further, the Committee has already retained its own financial advisor, which, according to the Parente Application, is to perform many of the same tasks for which the Committee now seeks to employ Bederson, another financial advisor. The employment of Bederson would waste estate resources, could lead to additional burdens on the Debtor’s employees and professionals, is not in the best interests of the Debtor’s estate, and is thus not reasonable.

WHEREFORE, the Debtor respectfully requests that the Court deny the Bederson

Application in its entirety.

Dated: November 14, 2003

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