IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: **MET-COIL SYSTEMS CORPORATION,** **Debtor.**	**Chapter 11** **Case No. 03-12676 (MFW)** **Transferred From the United States Bankruptcy Court for Northern District of Illinois**

TRAVELERS' REPLY IN SUPPORT OF THEIR MOTION FOR ABSTENTION AND REMAND[1]

Defendants, Travelers Casualty and Surety Company, formerly known as The Aetna Casualty and Surety Company, and The Travelers Indemnity Company of Illinois (collectively "Travelers"), for their Reply in Support of Their Motion for Abstention and Remand, state as follows:

INTRODUCTION AND BACKGROUND

In June of 2002, Met-Coil Systems Corporation ("Met-Coil") and its parent corporation, Mestek, Inc. ("Mestek") sued Travelers in a state law insurance coverage action in the Circuit Court for DuPage County, Illinois (the "Illinois Action"). On April 28, 2003, Travelers, Met-Coil and Mestek reached a tri-partite settlement of their insurance coverage dispute. In August of 2003, shortly before Met-Coil filed for bankruptcy, Met-Coil's and Mestek's outside counsel

[1] Travelers' Reply is being filed in connection with that certain adversary proceeding captioned *Met-Coil Systems Corporation, et al. v. National Union Fire Insurance Company, et al.*, which was transferred to this Court from the United States Bankruptcy Court for the Northern District of Illinois by Order dated December 9, 2003 (the "Transfer Order"). A true and correct copy of the Transfer Order is attached hereto as Exhibit A. A briefing schedule was in place on Travelers' Motion for Abstention and Remand (the "Abstention Motion") with Travelers' Reply being due December 11, 2003. Because the Transfer Order is not clear as to whether the briefing schedule is still in place, Travelers is filing this Reply in Met-Coil's bankruptcy case in order to preserve its rights. A copy of the Abstention Motion has previously been provided to this Court in support of its Response to Mestek, Inc.'s Limited Objection to Debtor's Motion to Assume or Approve.

informed Travelers that Met-Coil intended to file for bankruptcy and that Mestek no longer intended to abide by the settlement. In response, on August 25, 2003, Travelers filed a Motion to Enforce Settlement against Met-Coil and Mestek in the Illinois Action, seeking enforcement of the settlement as to all three parties under governing state law. Met-Coil filed for chapter 11 bankruptcy on August 26, 2003.

Rather than awaiting prompt resolution of Travelers' Motion to Enforce Settlement, which was scheduled for November 24, 2003 and would have resolved this dispute in its entirety, Met-Coil removed the Illinois Action and a parallel action that Travelers initiated against Met-Coil and Mestek in Iowa state court (the "Iowa Action"), to federal courts in Illinois and Iowa on October 14, 2003. Met-Coil's bankruptcy filing stayed Travelers' claims against Met-Coil in the Iowa Action pursuant to the automatic stay provision within the Bankruptcy Code, 11 U.S.C. § 362(a). Soon thereafter, on October 17, 2003, Met-Coil filed a Motion to Transfer the Illinois Action to the United States District Court for the District of Delaware where Met-Coil's bankruptcy proceedings are pending. Met-Coil then filed a Motion to Assume or Approve the settlement amongst Travelers, Met-Coil and Mestek before this Court on October 20, 2003.

Because Mestek claims that it is not a party to the settlement, Travelers timely filed a Preliminary Response to Met-Coil's Motion to Assume or Approve, as well as a Motion to Defer Ruling on Met-Coil's Motion to Assume or Approve, on the premise that Met-Coil's Motion is premature because a state law, pre-petition dispute exists as to whether the settlement is valid, existent and enforceable. Orion Pictures Corp. v. Showtime Networks, Inc., 4 F.3d 1095, 1099 (2nd Cir. 1993)(bankruptcy courts are not authorized to resolve questions involving the validity of a contract within the context of addressing a motion to assume.)

On October 22, 2003, Met-Coil presented its Motion to Transfer in the Illinois Action, at which time Travelers informed Judge St. Eve of the Northern District of Illinois of its intention to file its Motion for Abstention and Remand. Travelers asserted that its Motion for Abstention and Remand should be adjudicated prior to Met-Coil's Motion to Transfer. Judge St. Eve agreed with Travelers, denying Met-Coil's Motion to Transfer (without prejudice) and ruling that the Court would address Travelers' Motion for Abstention and Remand first. In addition Judge St. Eve ordered Travelers to file its Motion on or by October 28, 2003. (Id.)

Travelers filed its Motion for Abstention and Remand on October 28, 2003, premised upon 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); and the precedent established in United States Brass Corp. v. California Union Ins. Co. ("United States Brass Corp."), 198 B.R. 940 (N.D. Ill. 1996) and In The Matter Of United States Brass Corp. ("Brass"), 110 F.3d 1261 (7th Cir. 1997)(declaratory judgment actions regarding pre-petition insurance policies, which are initiated in state court under state law are merely "related to" non-core proceedings subject to abstention.) Shortly thereafter, Judge St. Eve referred the present case to the bankruptcy court pursuant to Northern District of Illinois Internal Operating Procedure 15(a). In a desperate attempt to avoid the application of Brass, Met-Coil filed a Renewed Motion to Transfer Venue, or alternatively, to Stay this Matter on December 3, 2003. On December 10, 2003, Bankruptcy Judge Sonderby granted Met-Coil's Motion to Transfer, and transferred Travelers' Motion for Abstention and Remand to this Court for resolution[2].

[2] Met-Coil sought transfer of the Illinois Action under 28 U.S.C. § 1404(a), which does not result in a change in governing law. Olcott v. Delaware Flood Co., 76 F.3d 1538, 1544-46 (10th Cir. 1996); Eckstein v. Balcor Film Investors, 8 F.3d 1121, 1126-27 (7th Cir. 1993); See also, Bloom v. Barry, 755 F.2d 356, 358 (3rd Cir. 1985), Van Dusen v. Barrack, 376 U.S. 612, 639, 84 S.Ct. 805, 821 (U.S. 1964); Ferens v. John Deere Co., 494 U.S. 516, 531, 110 S.Ct. 1274, 1284 (U.S. 1990). Therefore, Brass is binding precedent in this case, even though it has been transferred to this Court.

Travelers' Motion for Abstention and Remand firmly establishes that the pre-petition, state law contract dispute between Travelers, Met-Coil and Mestek belongs in state court where it began, because it is a non-core proceeding which involves important state law questions. This case does not invoke any substantive rights created by federal bankruptcy law, Travelers has not filed a proof of claim in Met-Coil's bankruptcy case, Met-Coil and Mestek initiated this case long before Met-Coil filed its bankruptcy petition, and the dispute as to the validity, existence and enforceability of the tri-partite settlement arose prior to Met-Coil's bankruptcy filing. As Congress has recognized the procedural and constitutional limitations on a bankruptcy court's jurisdiction, and the resolution of state law matters arising pre-petition is best left to state courts, this Court should abstain from hearing this case and remand it to Illinois state court for prompt resolution of Travelers' Motion to Enforce Settlement.

On November 26, 2003, Met-Coil filed its Objection to Travelers' Motion for Abstention and Remand[3] ("Met-Coil's Objection"). Met-Coil asserts that abstention and remand are inappropriate because the dispute between Travelers, Met-Coil and Mestek is a core matter and it will have a significant impact on other core matters and its overall reorganization. However, the Seventh Circuit rejected Met-Coil's very argument in Brass, in ruling that a pre-petition, state law dispute such as that presented herein is a non-core proceeding. Brass, 110 F.3d at 1268-69. Similarly, Met-Coil's attempts to portray the present dispute as one "arising under" the Bankruptcy Code is illogical, as the dispute arose in state court before Met-Coil filed for bankruptcy and would exist regardless of whether Met-Coil ever filed for bankruptcy.

Met-Coil also makes the remarkable assertion that abstention is inappropriate because Travelers has failed to show that this matter can be timely adjudicated in state court. Met-Coil

[3] Mestek filed a Joinder to Met-Coil's Objection on the same date.

neglects to inform this Court that this dispute would have been resolved in state court on November 24, 2003 if Met-Coil had not removed the case to federal court[4]. Most importantly, Met-Coil fails to provide any compelling reason that United States Brass Corp. and Brass should not dictate the outcome of this Motion, not even addressing them until page 10 of its Objection. Indeed, the only argument that Met-Coil makes in attempting to differentiate Brass is that Brass only involved a declaratory insurance coverage action, while the present case involves the enforceability and applicability of a contract in the context of the its Motion to Assume or Approve. This purported "distinction" is inconsequential, because the decisions in United States Brass Corp. and Brass apply equally to the state law insurance coverage dispute and the state law settlement dispute amongst Travelers, Met-Coil and Mestek, each of which arose in state court before Met-Coil filed for bankruptcy.

II. ANALYSIS

A. This Case Is Subject To Mandatory Abstention Under 28 U.S.C. § 1334(c)(2)

Pre-petition contract actions such as the case at bar, which are initiated in state court under state law, are merely "related to" non-core proceedings, which mandate abstention. United States Brass Corp., 198 B.R. at 946; UNR Industries, Inc. v. Continental Cas. Co., 942 F.2d 1101, 1103 (7th Cir. 1992); Brass, 110 F.3d at 1268-69; See also Beard v. Braunstein, 914 F.2d 434, 445 (3rd Cir. 1990); In Re NDEP Corp. v. Handl-IT, Inc., 203 B.R. 905, 908 (D. Del. 1996); Hatzel & Beuhler, Inc. v. Orange & Rockland Utilities., 107 B.R. 34, 39 (D. Del. 1989); Peter J. Schmitt Co., Inc. v. Firestone Star Markety, Inc., 105 B.R. 556, 558-59 (Bankr. D. Del. 1993); In Re Titan Energy, Inc., 837 F.2d 325, 330 (8th Cir. 1988)(finding that insurance coverage claims

[4] Should this Court abstain from hearing the present dispute, and remand the case back to Illinois state court, Travelers is fully in favor of an expedited briefing schedule and a prompt hearing date, since Met-Coil and Mestek have had almost four months to consider Traveler's Motion to Enforce Settlement.

are "related to" non-core proceedings.) In United States Brass Corp., the Northern District of Illinois ruled:

> [I]t is clear that the four state proceedings are not core proceedings. First, the four state proceedings do not invoke substantive rights created by bankruptcy law (unlike--for example--an action by the trustee to avoid a preference). On the contrary, the four state proceedings invoke rights exclusively under state law. Second, the four state proceedings could exist outside bankruptcy (unlike--for example--the filing of a proof of claim). Indeed all four of the proceedings were filed and (to varying degrees) litigated in Illinois state courts before Brass filed for bankruptcy protection in 1994. [Citations omitted].

United States Brass Corp., 198 B.R. at 946. The Seventh Circuit affirmed the Northern District's ruling in United States Brass Corp., concluding:

> [S]ection 1334(c)(2) makes abstention in favor of the state court *mandatory* in noncore proceedings not otherwise within federal jurisdiction and that these insurance coverage cases are noncore. Core proceedings are actions by or against the debtor that arise under the Bankruptcy Code in the strong sense that the Code itself is the source of the claimant's right or remedy, rather than just the procedural vehicle for the assertion of a right conferred by some other body of law, normally state law. The right to complain about a preference is created by the Bankruptcy Code itself, whereas [the debtor's] claimed right to insurance coverage is a creation of state contract law and one that would be vindicated in an ordinary breach of contract suit if [the debtor] were not bankrupt. [Citations omitted].

Brass., 110 F.3d at 1268 (emphasis in original).

In accordance with the decisions in United States Brass Corp. and Brass, courts in the Third Circuit have concluded that an action involving pre-petition contracts allegedly breached before and after the filing of a debtor's bankruptcy petition is entirely a non-core matter. Beard, 914 F.2d at 445; See also, In Re NDEP Corp., 203 B.R. at 980 (agreeing with bankruptcy court that state contract and tort claims are non-core proceedings); Hatzel & Buehler, Inc., 107 B.R. at 39 (state contract and tort claims that exist independent of bankruptcy law are non-core matters); Peter J. Schmitt Co., Inc. 105 B.R. at 559-60 (while the debtor's claims based upon alleged violations of the automatic stay provision are core proceedings, claims alleging pre-petition breach of contract are non-core proceedings).

Based on this precedent, there is no question that mandatory abstention is appropriate in the case at bar. Travelers' Motion for Abstention and Remand was timely, as only 14 days passed from the time Met-Coil removed this case until the time Travelers filed its Motion for Abstention and Remand. Second, as in United States Brass Corp., Brass and the other cases cited above, the issues raised in the Illinois Action are purely private-right, state law questions concerning the enforceability and scope of a settlement and (if the settlement is not performed) the proper construction of insurance policies. Next, the Illinois Action was commenced in Illinois state court long before Met-Coil removed it to federal court, and the contract disputes arose prior to Met-Coil's bankruptcy filing, as well. Thus, this dispute existed prior to and wholly independent of Met-Coil's bankruptcy proceedings.

In addition, absent Met-Coil's filing for bankruptcy, this Court would have no jurisdiction whatsoever over this case. Likewise, the Bankruptcy Code is not the source of the Travelers' right or remedy to enforce the tri-partite settlement. Finally, the Illinois state court can timely adjudicate this dispute.

There is no question that the Illinois Action is merely a non-core, "related to" proceeding. It is not enough that the outcome will ultimately affect the amount of property in Met-Coil's bankruptcy estate. The Illinois Action is still merely a contract action that may be timely adjudicated in Illinois state court and, indeed, should already have been fully resolved in Illinois state court had Met-Coil never filed for bankruptcy. The fact that Met-Coil has filed a Motion to Assume or Approve does not transform this state law, pre-petition contract dispute into a core proceeding. Orion, 4 F.3d at 1099-102 (contract dispute is a non-core proceeding and must be resolved outside the realm of bankruptcy and independently of a motion to assume said contract).

Met-Coil's contention that the tri-partite settlement is a core matter because it will have a

significant impact on Met-Coil's reorganization and other core matters can be easily disposed of[5]. Met-Coil has presented no evidence whatsoever establishing that the settlement has anything to do with the restructuring of the debtor-creditor relationships, which is at the core of the federal bankruptcy power. Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S.50, 88, 102 S. Ct. 2858 (U.S. 1982). To the contrary, the adjudication of the settlement issues will involve the resolution of state-created private rights, which are non-core matters. Id. The only relationship the pre-petition contract issues have with Met-Coil's bankruptcy proceedings is that the determination of the issues will affect the ultimate size of the estate, which is insufficient to render them core matters. Brass, 110 F.3d at 1268-69; Orion, 4 F.3d at 1102 (noting that defining pre-petition contract actions as core because the amounts due would inure to the benefit of the estate would "wipe out the underpinnings of *Marathon*); citing, 1 COLLIER ON BANKRUPTCY ¶ 3.01[2][B][III] at 3049. Indeed, the Seventh Circuit in Brass stated:

> The fact that it is an *important* right to the bankrupt--[the debtor] claims to be seeking $500 million in insurance coverage--is irrelevant. "Core" is a defined term in the Bankruptcy Code, a term of art rather than a metaphor. The impact of a claim on the size of the debtor's estate is a criterion of whether the claim is related to the bankruptcy and is therefore a noncore proceeding. So [the debtor] has it backwards--arguing for classification as a core proceeding on the basis of a criterion for classification as a noncore proceeding.

Brass, 110 F.3d at 1268-69.

Therefore, resolution of the present pre-petition, state law contract dispute should be left

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[5] Met-Coil cites several distinguishable cases in support of its claim that the resolution of the enforceability of the settlement is a core matter. For instance, Georgia Port Authority, Georgia Port Authority v. Diamond Mfg. Co. Inc., 164 B.R. 189 (Bankr. S.D. Ga. 1994), has no bearing on this case because it involved the assumption of a lease, which is treated differently by the Bankruptcy Code than a secured debt such as that at issue in this case. Likewise, United States Lines, Inc. v. American Steamship Owners Mut. Protection & Indemn. Assoc, 197 F.3d 631 (2nd Cir. 1999), is inapplicable because, unlike in the case a bar, the insurance proceeds represented the only potential source of cash available to a group of creditors. Similarly, Resolution Trust Corp. v. Best Products Co., Inc., 68 F.3d 26 (2nd Cir. 1995), does little to bolster Met-Coil's position, as unlike in this case, Brass, Orion and Marathon Pipe Line Co., the parties in Best Products Co. Inc. sought the benefit of the bankruptcy court's jurisdiction by filing proofs of claim, thereby rendering the dispute a core matter.

to a state court, and this non-core proceeding should be remanded pursuant to 28 U.S.C. . § 1334(c)(2).

B. Discretionary Abstention Is Warranted Under 28 U.S.C. § 1334(c)(1)

In addition to being dispositive on the issue of mandatory abstention, United States Brass Corp. is instructive on the issue of permissive abstention under 28 U.S.C. § 1334(c)(1). In United States Brass Corp., the court ruled that 28 U.S.C. § 1334(c)(1) permits the federal court to abstain from hearing declaratory judgment actions pertaining to pre-petition insurance policies filed in state court and premised purely upon state law. United States Brass Corp., 198 B.R. at 947-48. In so ruling, the court relied on the following: (1) unsettled state law issues were present, so principles of comity and respect for state law favored permissive abstention; (2) state law issues predominated over bankruptcy issues, as there were no federal issues involved in the declaratory judgment actions; (3) there were indications that the insured was attempting to forum shop by removing the state court actions to federal court; and (4) there was no basis for federal jurisdiction other than 28 U.S.C. § 1334. Id. at 948.

All of the criteria for mandatory abstention are met in this case. Thus, it only makes sense for this Court to exercise its discretion to abstain on the basis of 28 U.S.C. § 1334(c)(1), as well. In addition, as in United States Brass Corp., this case involves important pre-petition, state law issues, and this case has nothing whatsoever to do with bankruptcy. The contract dispute at issue is governed purely by state contract law. Thus, in the interests of comity and out of respect for state law, this Court should abstain in favor of letting the Illinois state court preside over the case. United States Brass Corp., 198 B.R. at 948.

Wholly without support, Met-Coil contends that a Court's election to remand this case to state court would have a negative effect on the efficient administration of its bankruptcy case,

because the bankruptcy case is proceeding rapidly. Of course, the present dispute would have been resolved on November 24, 2003, had Met-Coil not removed the case to federal court. But more importantly, there is no reason even to suggest that the Illinois state court would not resolve the dispute in advance of confirmation of any Plan in this proceeding.

As a distraction and with no support whatsoever, Met-Coil accuses Travelers of forum shopping. Travelers referred the present case to the United States Bankruptcy Court for the Northern District of Illinois only because referral to the bankruptcy court was automatic and required under Northern District Internal Operating Procedure 15(a). Indeed it is Met-Coil that has done everything in its power to transfer this case out of the Northern District of Illinois to this Court, in an obvious attempt to avoid Seventh Circuit precedent, which directs this case back to Illinois state court -- the original jurisdiction of Met-Coil's choosing. Thus, it is inappropriate for Met-Coil to insinuate that Travelers informing the Northern District Judge of the application of Internal Operating Procedure 15(a) constituted forum shopping.

Accordingly, this Court should exercise its discretion and abstain from presiding over this pre-petition, state law contract dispute.

C. Remand Is Warranted Under 28 U.S.C. § 1452(b)

The same factors that weigh in favor of discretionary abstention under 28 U.S.C. § 1334(c)(1) weigh equally in favor of remand. Baxter Healthcare Corp. v. Hemex Liquidation Trust, 132 B.R. 863, 869 (N.D. Ill. 1991).

There is no reason to think the state court would not be able to resolve the contract dispute in short order. Indeed, it would already have been resolved, and the parties could have avoided the extensive briefing in this case and in the Illinois Action, had Met-Coil maintained the Illinois Action in state court. Thus, Met-Coil's removal has already resulted in the

duplication and uneconomical use of judicial resources. Remand will eliminate the need for *de novo* district court review of this non-core, "related to" proceeding, and will save a substantial amount of time and avoid any further duplication of judicial resources. See Lone Star Indus., Inc. v. Liberty Mut. Ins. Co., 131 B.R. 269, 274 (D. Del. 1991).

In addition, if the Illinois state court enforces the tri-partite settlement between Travelers, Met-Coil and Mestek, which is likely, Met-Coil and Mestek will receive a substantial sum of money, which will only assist in the administration of Met-Coil's estate. Met-Coil's efforts to reorganize and manage its estate would be benefited by a speedy determination of the enforceability and scope of the settlement between it, Mestek and Travelers, which would be provided by the Illinois state court.

Additionally, when it comes to matters of state contract law, there is no question that state courts have greater expertise than federal courts. "This is a state law action and a state court is better able to respond to a suit involving state law." Drexel Burnham Lambert Group, Inc. v. Vigilant Ins. Co., 130 B.R. 405, 407 (S.D.N.Y. 1991). State courts also have far greater interests in such matters than federal courts. Accordingly, to preserve comity between state and federal courts and to utilize the state court's greater expertise, the issues raised in this case are better addressed by a state court. United States Brass Corp., 198 B.R. at 948 (highlighting the importance of allowing state law issues to be decided in state courts)[6].

[6] Met-Coil's contention that remand of the Illinois Action and the Iowa Action will result in the risk of inconsistent judgments is a red-herring. Pursuant to the automatic stay provision within the Bankruptcy Code, 11 U.S.C. § 362(a), Travelers' claims against Met-Coil in the Iowa Action have been stayed. On the other hand, the Illinois Action has not been stayed because Met-Coil is the Plaintiff. Thus, without securing relief from the automatic stay, the Illinois Action is the only forum in which Travelers can obtain a comprehensive adjudication of its Motion to Enforce Settlement against both Met-Coil and Mestek at this time. Therefore, there is no threat of inconsistent judgments pertaining to Travelers' Motion to Enforce Settlement.

III. CONCLUSION

Travelers' Motion for Abstention and Remand should be granted. 28 U.S.C. § 1334(c)(2) mandates that this Court abstain from presiding over this case because: (1) Travelers filed a timely motion to abstain; (2) the Illinois Action presents strictly state law claims that arose pre-petition; (3) the Illinois Action is a non-core, "related to" proceeding of Met-Coil's bankruptcy proceedings; (4) this Court would have no jurisdiction over these proceedings in the absence of Met-Coil's bankruptcy; (5) Met-Coil and Mestek initiated this action in Illinois state court; (6) Travelers has not filed a proof of claim in this case and (7) the Illinois court can timely adjudicate the contractual issues.

Similarly, discretionary abstention is warranted under 28 U.S.C. § 1334(c)(1) because: (1) all of the mandatory abstention prerequisites under 28 U.S.C. § 1334(c)(2) have been satisfied; (2) this case presents significant, state law contract issues; and (3) Met-Coil's efforts to administer its estate will be facilitated by the state court presiding over this case.

Finally, remand is appropriate under 28 U.S.C. § 1452(b) because: (1) remand will save a substantial amount of time and avoid the needless duplication of judicial resources that has already occurred; (2) remand will not adversely affect the administration of Met-Coil's estate; (3) the Illinois state court has greater expertise in adjudicating matters of state contract law; and (4) the purely state law issues raised in this case are better addressed by an Illinois state court to preserve comity between state and federal courts.

WHEREFORE, Travelers Casualty and Surety Company, formerly known as The Aetna Casualty and Surety Company, and The Travelers Indemnity Company of Illinois respectfully request that this Honorable Court grant its Motion for Abstention and Remand and thereby return this case to the Illinois state court.

Respectfully submitted,

Dated: December 11, 2003
Wilmington, Delaware

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CERTIFICATE OF SERVICE

I, Tobey M. Daluz, Esquire hereby certify that on this 11th day of December, 2003, I caused a true and correct copy of the foregoing Reply in Support of Motion for Abstention and Remand to be served on the following service list in the manner indicated:

Dated: December 11, 2003
Wilmington, Delaware

/s/ Tobey M. Daluz
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