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 REPLY IN SUPPORT OF ITS FIRST SUBSTANTIVE OMNIBUS OBJECTION TO PROOFS OF CLAIM 172, 184, 185, 186, 187, 202, 203, 204, 205, 212, 218, 220 222, 223, 224, 226, 227, 235, 240 AND 246 FOR CONTRIBUTION AND RULE 11 SANCTIONS [D.I. No. 296]

Introduction

In their proofs of claim, the Claimants[1] asserted contingent claims for contribution and reimbursement (the "Contribution Claims"), and all but one of the Claimants also made claims under Rule 11 of the Federal Rules of Civil Procedure (the "Rule 11 Claims"). In their Response[2] (filed after the claims bar date), the Claimants asserted for the first time anywhere that they may have "direct claims" against the Debtor for, among other things, trespass, nuisance or negligence. The Contribution Claims must be disallowed;

[1] Unless otherwise defined herein, the capitalized terms in this Reply shall have the same meanings ascribed to them in the Debtor's First Substantive Omnibus Objection to Proofs of Claim 172, 184, 185, 186, 187, 202, 203, 204, 205, 212, 218, 220, 222, 223, 224, 226, 227, 235, 240 and 246 For Contribution and Rule 11 Sanctions [D.I. No. 296] (the "**Objection**").

[2] The "Response" is collectively (i) the Response to Objection to Debtor's First Substantive Omnibus Objection to Proofs of Claim 172, 184, 185, 186, 187, 202, 203, 204, 205, 212, 218, 220, 222, 223, 224, 226, 227, 235, 240 and 246 [D.I. No. 425] (the "**Response**") filed by Arrow Gear Company, Ames Supply Co., Bison Gear and Engineering Corp., Flexible Steel Lacing Company, Lindy Manufacturing Company, Magnetrol International, Inc., Molex Incorporated, Morey Corporation, Rexnord Corporation and Tricon Industries (the "**Third Party-Claimants**") and (ii) William Helwig's Response in Opposition to Debtor's First Substantive Omnibus Objection to Proof of claim 224 [D.I. 437] filed by William Helwig ("**Helwig**", and collectively with the Third-Party Claimants, the "**Claimants**").

the Rule 11 Claims should be determined in another court; and the "direct claims" are not properly before the Court.

Argument

I. The Contribution Claims Must Be Disallowed

Nothing in the Claimants' Response rebuts the showing made in the Objection that the Contribution Claims should be disallowed. First, the Response does not effectively deny that the Contribution Claims are contingent claims for contribution or reimbursement for which the Claimants are co-liable with the Debtor. Therefore, the Contribution Claims must be disallowed pursuant to 11 U.S.C. § 502(e)(1)(B). Nor does the Response state any purpose served by those claims. The Claimants are already defendants in the Debtor's Contribution Actions in which the Debtor is asking the district court to adjudicate each party's share of the responsibility for damages caused by the alleged groundwater contamination. The Contribution Claims in this Court are at best redundant.

A. 11 U.S.C. § 502(e)(1)(B) Mandates Disallowance Of The Contribution Claims

Under § 502(e)(1)(B), a claim must be disallowed if: (1) the claim is for reimbursement or contribution; (2) the claim is contingent; and (3) the claimant is co-liable with the debtor with respect to such claim. 11 U.S.C. § 502(e)(1)(B); In re Pinnacle Brands, Inc., 259 B.R. 46, 55 (Bankr. D. Del. 2001). The Contribution Claims satisfy each of these three criteria.

First, the Claimants admit that the claims are contingent. See Response at ¶ 10. Second, the Contribution Claims, as characterized by the Claimants in their own proofs

of claim, are claims for contribution.[3] Indeed, the Claimants themselves defined their own claims as "Contribution Claims." Id.

Third, the Claimants are co-liable with the Debtor with respect to the Contribution Claims. The Claimants allege in the addendum to their proofs of claim that, "[t]o the extent…Creditor caused the release of hazardous substances from its property … then Creditor would have a claim for contribution and other relief under state and federal statutes and common law against any other parties responsible for such contamination." They further state that, "if Creditor is found to be liable …for contamination caused or contributed to…by Lockformer and/or Met-Coil, then Creditor would be entitled to recover a portion of the remediation costs and money damages paid by Creditor… from Lockformer and/or Met-Coil in an amount equal to the pro rata share of liability for the contamination caused or contributed to by Lockformer and/or Met-Coil." Id. Therefore, the Contribution Claims against the Debtor depend entirely on a finding that the Claimants and the Debtor share liability for the damages to the same party. The Claimants are not asking in their proofs of claim that the Debtor satisfy claims for damages to the Claimants' property, but rather that the Debtor satisfy potential future claims to third parties. In Cottonwood Canyon Land Co., 146 B.R. 992, 995, the debtor in that case, like the Debtor here, was not being asked to satisfy a claim for injury to the claimant's property, but rather to satisfy potential future liability under CERCLA and other state environmental laws. The claimant was liable for the cleanup as the owner of the property and the debtor was also liable for cleanup costs as the one who contaminated the property. The Cottonwood Court ruled that the debtor and

[3] See Addendum attached to the Proof of Claim filed by Rexnord Corporation, Claim No. 172, pp. 2 -3, a copy of which is attached hereto as Exhibit A. Each of the proofs of claim that the other Claimants filed contains an addendum substantially similar to the Addendum attached hereto.

the claimant are co-liable in such a situation. Id. "Such a claim would necessarily be one for liability for which both [the debtor] and [claimant] are responsible and would fall within the ambit of 11 U.S.C. § 502(e)." Id.

The Claimants further allege, however, that the Debtor will not be liable to both the Claimants and to those parties that have failed to assert claims by the bar date. For purposes of § 502(e)(1)(B), it does not matter whether the creditor filed a proof of claim. What matters is that creditor has such a claim. Cottonwood Canyon, 146 B.R. at 997 ("[T]he application of section 502(e) is not premised on the actual filing of multiple claims but, rather, on the existence of such claims.").

The Claimants' remedy was to file proofs of claim on behalf of the common creditors under Bankruptcy Rule 3005. That would have protected the Claimants from the risk that they would end up solely liable to common creditors who failed to file their own proofs of claim. That indeed is the purpose of Rule 3005. That the Claimants may have failed to file Rule 3005 proofs of claim is not a reason to ignore the plain terms of § 502(e).

The Claimants last gasp is an assertion in their Response that the policy behind § 502(e)(1)(B) is somehow inconsistent with the policies underpinning state and federal environmental laws. Despite the Claimants' assertion, however, three circuit courts of appeal have applied § 502(e)(1)(B) in the context of contingent damages and response costs arising from environmental liabilities. In re Charter Co., 862 F.2d. 1500, 1503 (11th Cir. 1989) ("[w]ith the Legislative history of both CERCLA and § 502(e)(1)(B) of the Bankruptcy Code in mind, we conclude that the appellants' contention that disallowance of their proofs of claim is inconsistent with the congressional policy reflected in CERCLA is without merit."); In re Eagle-Picher Indus., Inc, et al., 131 F.3d. 1185 (6th Cir. 1997) ("[w]hether under

CERCLA or the Spill Act or some other law, [claimant's] claims are for environmental cleanup costs associated with the [property], the very same costs for which [debtor] may turn out to be co-liable. This is precisely the kind of contingent co-liability envisioned by § 502(e)(1)(B)."); In re Hemmingway Transport, Inc., 993 F.2d. 915 (1st Cir. 1992).

B. The Newly Concocted "Direct Claims" Are Not Part Of The Proof of Claim Before The Court And Are Not Properly Stated Even In The Response.

The Claimants allege in their Response that there may be other legal bases for the Contribution Claims including direct claims for trespass, nuisance or negligence. In their Response, the Claimants assert that they, "may claim that the Debtor committed a trespass by permitting toxic substances to migrate to Claimants' property, or maintain a nuisance on Debtor's property, or by Debtor's negligence in the conduct of its business…" See Response at ¶ 12.[4] The Claimants never allege, however, even in the Response, that the Debtor actually did commit trespass, negligence or nuisance. The only basis that the Claimants put forth in support of their Contribution Claims is that they might have a claim against the Debtor to recover response costs if they are in turn found liable for environmental contamination, clearly a claim for contribution.

Even if the Response had described direct claims against the Debtor, no such claims were alleged in the Claimants' proofs of claim. Any direct claims that the Claimants may have against the Debtor would be separate and distinct from the Contribution Claims. The applicable bar date for any such claim was November 14, 2003. These claims, if there

[4] The Claimants rely on In re Cottonwood Canyon Land Co. for the proposition that direct claims for nuisance, trespass or negligence are not subject to disallowance under § 502(e)(1)(B). In re Cottonwood Canyon Land Co., 146 B.R. 992, 995. In Cottonwood Canyon, however, the Court denied the creditors argument that its claims for future response costs under CERCLA were direct claims. Id. at 996.

are any, are barred. Furthermore, the Claimants cannot claim any prejudice by application of the bar date. Before the Debtor commenced this case, the Debtor filed third-party complaints against the Claimants in the LeClerq Action on May 31, 2002, and in the Mejdrech Action on July 1, 2003. All the Claimants answered the Debtor's third-party complaints. None filed a counterclaim alleging any "direct claims," even though those claims might have been compulsory, and were certainly permissive, counterclaims under Fed. R. Civ. P. 13. The Claimants who are so quick to hurl frivolous Rule 11 Claims against others simply fabricated their "direct claims" in a futile effort to avoid the effect of § 502(e).

The Claimants' Contribution Claims fall squarely within the definition and policy of § 502(e)(1)(B) and must be disallowed. Moreover, these claims must also be disallowed under § 502(b)(1) because the Claimants have no claim for relief distinct from that which will be afforded in the Debtor's Contribution Action. Furthermore, the Claimants' have failed to adequately or timely allege any direct claims against the Debtor. Accordingly, the Contribution Claims must be disallowed.

II. The Rule 11 Claims Must Be Decided By The District Court

Rule 11 of the Federal Rules of Civil Procedure states, in pertinent part:

> If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

Fed. R. Civ. P. 11(c). Under Rule 11, the court in which the alleged violation occurred has sole discretion to impose an appropriate sanction. In fact, the court in which the alleged violation of Rule 11 has occurred is the only court that is in a reasonable position to

determine whether Fed R. Civ. P. 11(b) has been violated. The Claimants agree that the District Court is the appropriate forum to determine the merits of the Rule 11 Claims. See Response at ¶ 18. Accordingly, this Court should defer ruling on the allowance or disallowance of the Rule 11 Claims until such time as the District Court has ruled on the merits of such claims.[5]

The Debtor does not agree, however, that in the unlikely event the district court granted monetary relief on the Rule 11 Claims, that relief would be compensatory in nature, and not subject to "disallowance" as "non-compensatory". More specifically, the Debtor does not agree that any Rule 11 sanctions would be treated under a plan of reorganization as unsecured claims, rather than claims for non-compensatory damages and penalties. While the Debtor submits that the District Court is the proper forum to adjudicate the merits of the Rule 11 Claims, this Court has the sole authority to allow or disallow the Rule 11 Claims and to determine their proper treatment under a plan of reorganization. In any event, should those issues ever arise, they are for another day.

[5] In their Response, the Claimants refer to certain memoranda produced by the law firm of Chuhak & Tecson, P.C. entitled "The Living Theory of the Case." The memoranda referenced in the Claimants' Response are privileged and confidential attorney work product. The Debtor asserts that those memoranda were inadvertently produced to the Claimants. By letter dated December 24, 2003, prior to the date the Claimants' Response was filed, counsel for the Debtor demanded the immediate return of the inadvertently produced documents and also demanded that those documents not be reviewed or used by Claimants in any way. Despite the Debtor's demand for the return of the documents, the Claimants continue to improperly hold and use these documents and have in fact referenced them in their Response.

Conclusion

The Contribution Claims asserted by the Claimant are without merit and are contingent claims for contribution and reimbursement for which the Claimants are co-liable with the Debtor. Accordingly, the Debtor requests this Court disallow the Contribution Claims pursuant to § 502(b) and (e). Although the Rule 11 Claims also lack merit, the venue to decide them is the United States District Court for the Northern District of Illinois. Accordingly, the Debtor requests this Court defer ruling on the allowance of the Rule 11 Claims until such time as the District Court has ruled on the merits of such claims.

Dated: January 13, 2004

MORRIS, NICHOLS, ARSHT & TUNNELL

/s/ Jason W. Harbour
Eric D. Schwartz (No. 3134)
Jason W. Harbour (No. 4176)
1201 N. Market Street
P.O. Box 1347
Wilmington, Delaware 19899-1347
Telephone: (302) 658-9020
Facsimile: (302) 658-398

GOLDBERG, KOHN, BELL, BLACK, ROSENBLOOM & MORITZ, LTD.

Ronald Barliant (Illinois ARDC# 0112984)
Kathryn A. Pamenter (Illinois ARDC# 6231191)
Andrew E. Weissman (Illinois ARDC# 6273246)
55 East Monroe Street, Suite 3700
Chicago, Illinois 60603
Telephone: (312) 201-4000
Facsimile: (312) 332-2196

Counsel for Debtor and Debtor In Possession

387982