IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: MET-COIL SYSTEMS CORP.,	:	Chapter 11
	:	
Debtor.	:	Case No. 03-12676 (MFW)
	:	
	:	**Objections due: March 3, 2004**
	:	**Hearing date: March 8, 2004 @ 12:30 p.m.**
	:	
	:	**Related Docket No. 595**

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE MOTION OF TERESA MEJDRECH, *ET AL.*[1] TO MODIFY THE AUTOMATIC STAY

The Official Committee of Unsecured Creditors (the "Committee") of the estate of Met-Coil Systems Corporation (the "Debtor"), by and through the undersigned counsel, hereby makes and files this its objection (the "Objection") to the Motion to Modify the Automatic Stay (the "Motion") propounded by Teresa Mejdrech *et al.* (the "Mejdrech Plaintiffs"), and shows this Court as follows:

BACKGROUND

1. On August 26, 2003 (the "Petition Date"), the Debtor filed its voluntary petition for reorganization under chapter 11 of title 11 of the United States Code, §§ 101 *et seq.* (the "Bankruptcy Code"). Since the Petition Date, the Debtor has continued to operate its business and manage its property as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

2. On September 11, 2003, the Office of the United States Trustee appointed the Committee. Thereafter, the Court entered an order on October 20, 2003 authorizing the retention

[1] The movants of the instant Motion are Teresa Mejdrech, Daniel Mejdrech, Mary Beno and Mark Beno, individually and on behalf of others similarly situated.

of Klehr Harrison as Committee Counsel and Parente Randolph LLP ("Parente") as the Committee's financial advisors. No trustee or examiner has been appointed herein.

3. On November 25, 2003, the Debtor and Mestek filed a Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the Chapter 11 Plan of Reorganization Proposed by Met-Coil Systems Corporations, Inc. and Mestek, Inc., as Co-Proponents (the "Disclosure Statement") and related Chapter 11 Plan of Reorganization Proposed by Met-Coil Systems Corporations, Inc. and Mestek, Inc., as Co-Proponents (the "Plan"). The hearing on the Disclosure Statement was to take place on December 10, 2003, but has been continued until April 12, 2004.

4. While the Committee objected to the Disclosure Statement on grounds that it provided inadequate information, the Committee has been working with the Debtor in an effort to put forth a confirmable plan of reorganization.

5. The Debtor's chapter 11 filing was caused by the significant liabilities incurred by the Debtor as a result of the discharge of a contaminant known as trichloroethylene ("TCE") at its facilities in Lisle, Illinois. As indicated in the Disclosure Statement, the discharge of TCE at the Lisle facility has resulted in significant litigation involving the Debtor and its parent Mestek, Inc. ("Mestek").

6. In addition to significant cost and expense incurred to address regulatory enforcement actions and remediation of the contamination, the Debtor and Mestek have been embroiled in personal injury and property damage litigation in Illinois brought by the Mejdrech Plaintiffs and others[2] who have allegedly been affected by the contamination. Prior to the

[2] Other TCE-related actions filed against the Debtor and Mestek include: Anne Schreiber v. The Lockformer Co., et al., C.A. No. 01C6097, United States District Court for the Northern District of Illinois (the "Schreiber Action"); Leclerq v. The Lockformer Co., et al., C.A. No. 01C7164, United States District Court for the Northern District of Illinois (the "Leclerq Action"); and DeVane, et al. v. The Lockformer Co., et al., Case No. 01L377, Circuit Court for the 18th Judicial Circuit, DuPage County, Illinois (the "DeVane Action").

Petition Date, the Debtor settled one class action lawsuit for $10 million (Disc. Stm. at p. 18) and was adjudged liable to a third class of plaintiffs in an Illinois jury verdict rendered in July 2003 in the sum of $2,368,500. (Disc. Stm. at p. 18.)

7. In addition to these claims, the Debtor is defending at least five other actions brought by persons allegedly affected by the TCE contamination. (Disc. Stm. at p. 18-20.) The Debtor has also filed suit against certain insurers and alleged third-party contributors to the contamination seeking recovery for contribution and indemnification for the Debtor's environmental contamination liabilities. (Disc. Stm. at pp. 28-29.) Finally, the Debtor, Mestek and Honeywell International, Inc. ("Honeywell"), the manufacturer of the TCE, are involved in litigation in this Court and in Illinois (which includes the Mejdrech Plaintiffs' property damage action) over the Debtor's and Mestek's liability to Honeywell on an indemnification and settlement agreement concerning the contamination entered into in 1994. (Disc. Stm. at pp. 27-28.)

8. In response to these lawsuits and in an effort to deal with present and future TCE claims, the Debtor has sought to reorganize pursuant to a plan of reorganization that channels present and future TCE property damage and personal injury claims into a trust (the "TCE Trust") and providing a channeling injunction against such claimants from bringing TCE-related claims against any party contributing to the funding of the plan. (Disc. Stm. at pp. 48-58.)

9. The channeling injunction is a *quid pro quo* between the Debtor and Mestek and the Debtor and Settling Insurer (as defined in the Plan). Mestek faces significant exposure for the Debtor's environmental liabilities. Mestek is a named defendant in some of the personal injury and property damage actions that have been filed against the Debtor. In addition, Honeywell has sued Mestek, contending that Mestek is liable to Honeywell for the cost and

expense that Honeywell has incurred subsequent to the execution of the indemnification and settlement agreement with the Debtor.

10. Under the Plan, Mestek, in exchange for funding the bulk of the TCE Trust, will receive the benefit of the channeling injunction, which would, among other things, extinguish the alter ego claims of the estate against Mestek. (Disc. Stm. pp. 52-53.) The same applies to any Settling Insurer (Disc. Stm. pp. 54-56.) Honeywell would also be able to benefit from the channeling injunction in exchange for a settlement payment that would be used to fund the TCE Trust and the settlement of Honeywell's claims against Mestek.[3]

ARGUMENT

I. THE MEJDRECH PLAINTIFFS HAVE FAILED TO SHOW CAUSE THAT THE AUTOMATIC STAY SHOULD BE MODIFIED

A. The Legal Standard Under Section 362

11. Section 362(d)(1) of the Bankruptcy Code provides that upon a request from a party in interest, the court shall grant relief from the automatic stay "for cause . . . ." The term "cause" is not defined in the Bankruptcy Code, but rather, must be determined on a case-by-case basis. In the Matter of Rexene Products Co., 141 B.R. 574, 576 (Bankr. D. Del. 1992) (*citing* In re Fernstrom Storage and Van Co., 938 F.2d 731, 735 (7th Cir. 1991)). As the Third Circuit explained in Baldino v. Wilson (In re Wilson), 116 F.3d 87 (3d Cir. 1997), since the statute "does not define 'cause,' . . . courts [should] consider . . . [whether cause exists based on] the totality of the circumstances in each particular case." Id. at 90 (citing In re Trident Assocs., 52 F.3d 127 (6th Cir. 1995)).

12. In American Airlines, Inc. v. Continental Airlines, Inc. (In re Continental Airlines, Inc.), 152 B.R. 420 (D. Del. 1993), this Court set forth criteria to be considered in

[3] Mestek and Honeywell are currently in negotiations as to such a settlement (Transcript of Hearing held Feb. 17, 2004, p.7 (hereinafter referred to as "Transcript p. ____")).

determining whether "cause" exists to lift the stay to allow parties to litigate their dispute in a non-bankruptcy forum:

> There is no rigid test for determining whether sufficient cause exists to modify an automatic stay. Rather, in resolving motions for relief for "cause" from the automatic stay courts generally consider the policies underlining the automatic stay in addition to competing interests of the debtor and the movant. In balancing the competing interests of the debtor and the movant, courts consider three factors: (1) the prejudice that would be suffered should the stay be lifted; (2) the balance of the hardships facing the parties; and (3) the probable success on the merits if the stay is lifted.

Id. at 424 (citing Fernstorm Storage, 938 F. 2d at 734-737).

13. The leading Delaware case on the standards for stay relief is Rexene. In Rexene, this Court stated that relief from the automatic stay should be granted when the movant can show:

> (a) the debtor or the debtor's estate will not be greatly prejudiced by continuing the civil suit;
>
> (b) the hardship to the movant by maintenance of the automatic stay considerably outweighs the hardship to the debtor; and
>
> (c) the movant has a reasonable chance of prevailing on the merits.

Rexene, 141 B.R. at 576. The Mejdrech Plaintiffs fail to satisfy the Rexene factors and thus do not demonstrate cause for modification of the automatic stay under 11 U.S.C. §362(d).

B. The Mejdrech Plaintiffs' Grounds for Relief are Based on Incorrect and Inaccurate Assumptions

14. The Mejdrech Plaintiffs base their request for relief on several faulty and inaccurate assumptions, which include, among others, (i) that the Debtor and Mestek have abandoned the concept of channeling both the TCE property damage claims and the TCE personal injury claims into a TCE trust, and instead will only be seeking to channel the TCE personal injury claims into such trust; (ii) that negotiations as to the Plan on file have failed; (iii)

that Mestek is unwilling to fund the Plan; and (iv) that the Debtor will be unable to formulate a confirmable plan. None of these assumptions is correct.

15. First, since the filing of this chapter 11 case, the Debtor has been working with Mestek, Honeywell and the representative for future TCE claimants (the "Future Representative") to reorganize the Debtor and resolve present and future TCE claims through a TCE trust and § 105 channeling injunction.

16. At the hearing held on February 17, 2004, counsel to the Debtor indicated to the Court that, although the plan negotiation process has taken longer than expected, it is nearing its conclusion.

> The [plan] process is near its conclusion, its logical conclusion. The legal representative has been provided with all of the information that is relevant or material to the decision with respect to the trust. And we can anticipate that by next Monday the legal representative and his team of experts and other professionals will have completed their analysis, or due diligence, so to speak, of that information. And we are expecting that shortly thereafter, in other words, we would hope and trust some time next week, Mr. Green will be able to state an amount that based on his analysis he believes – he has provided amounts up till now but those have always been followed with further discussions. I am now saying I think we are at the end point. So I think he will provide an amount which he believes necessary, Mestek will provide an amount that it believes is necessary, we trust. And if there is a gap, then the debtor and, along with the other parties . . . will do everything possible to see if we can bridge that gap and bring those parties together.

(Transcript of Hearing held February 17, 2004, p.5.)

17. Thus, the Debtor and Mestek have not deviated from the concept of channeling the TCE property damage and personal injury claimants into a TCE trust as contemplated under the Plan. Moreover, negotiations regarding the funding for the TCE Trust and the Plan are ongoing.

18. Second, neither the Debtor nor Mestek have indicated that Mestek is unwilling to fund the Plan. "[I]t has always been contemplated, it's still contemplated, that Mestek as the

corporate parent would provide at least the bulk of the funding for that, for that [TCE] trust and for the plan in general." (Transcript, p. 3.)

19. Third, counsel for the Debtor also indicated that in the event a resolution between Mestek and the Future Representative as to the funding of the TCE trust cannot be reached, the Debtor has already begun discussing other plan alternatives. (Transcript, pp. 5-6.)

20. The Mejdrech Plaintiffs rush to gloom and doom based assumptions ignore the particular facts and special circumstances of this case. This is the first TCE-related bankruptcy and thus the first time a debtor has sought to confirm a plan using a TCE trust to deal with TCE-related claims. As a result, the history, data and case law found in asbestos bankruptcy cases are not present. This is a novel case with a novel plan. Because this case is the first of its kind, the negotiation process towards reaching a consensual plan among the constituents has naturally taken more time.

21. Putting the events of this case in this context, the Debtor has made significant progress in its reorganization efforts. This case is only seven months old. The Debtor's exclusivity period under Section 1122 in which to form a plan does not expire until April 30, 2004 and the hearing on the disclosure statement is not until April 12, 2004 – six weeks away. It would be premature to sound the death knell for this case and allow the Mejdrech Plaintiffs to proceed with their property damage action on that basis.

C. The Debtor and its Creditors Will Suffer Severe Hardship and Prejudice if the Automatic Stay is Modified

22. Notwithstanding the progress of this case, the Mejdrech Plaintiffs want to disrupt the entire plan process and forestall the reorganization of the Debtor to the detriment of all creditors.

23. The Mejdrech Plaintiffs argue that allowing their property damage action to go forward on the issue of liability will not prejudice the Debtor and that the hardship to be borne by the Mejdrech Plaintiffs if the automatic stay is not modified substantially outweighs the harm to the Debtor. Nothing could be further from the truth.

24. To the contrary, allowing the Mejdrech Plaintiffs to proceed with their property damage action on the liability issue will, among other things, (i) disrupt the plan process; (ii) deplete the assets of the estate; and (iii) detract the Debtor's management and employees away from the Debtor's operations and reorganization efforts.

25. The Debtor has made significant progress in this case. In less than six (6) months after the Petition Date, the Debtor filed its Disclosure Statement and Plan, reached a settlement[4] with the Mejdrech Plaintiffs (which has not been terminated by the Mejdrech Plaintiffs), entered into settlements with two of its insurers and is currently negotiating with its other insurers. Further, negotiations between Mestek and the Futures Representative as to the funding required under the Plan have been ongoing. The Debtor has devoted virtually all of its efforts towards the confirmation of the Plan.

26. The settlements entered into by the Debtor with the Mejdrech Plaintiffs and the Debtor's insurers are contingent on confirmation of the current Plan. Allowing relief from the automatic stay at this juncture would derail the plan and void the settlements. Further, in the event the Plan is required to be withdrawn, such relief would thwart any effort to negotiate an alternative plan and salvage the settlements with the Debtor's insurers. For these reasons alone, the Motion should be denied. See e.g., In re Continental Airlines, 177 B.R. 475, 481 (D. Del. 1993)(finding a pending action would cause immediate and irreparable harm to the debtor if said action" would so consume the time, energy and resources of the debtor that it would substantially

hinder the debtor's reorganization effort."); and In re Chateugay Corp., 201 B.R. 48, 72 (Bankr. S.D.N.Y. 1996), aff'd in relevant part 213 B.R. 633 (S.D.N.Y. 1997)(holding irreparable harm to debtor present where action "threatens reorganization process" or "would impair the [bankruptcy] court's jurisdiction.").

27. In addition to thwarting the plan process, the relief sought by the Mejdrech Plaintiffs will result in the depletion of assets of the estate, harming all creditors. First, to the extent the Mejdrech Plaintiffs base their claims against Mestek on any alter ego theories, the Mejdrech Plaintiff's are usurping an asset of the estate. See Phar-More v. Cooper & Lybrand, 22 F.3d 1228, 1240 n. 20 (3rd Cir. 1994)(alter ego and veil piercing claims property of the estate where such remedies are provided under state law to prevent unjust or inequitable results.); see also Transcript of Hearing held December 10, 2003, p. 47 (alter ego claims based upon the activities of Mestek vis-a-vis Metcoil clearly property of the estate under Sections 541 and 544).

28. Second, to the extent the Mejdrech Plaintiffs succeed on their liability claims against Mestek and Honeywell, claims of contribution and/or indemnification by Mestek and Honeywell will arise against the Debtor, increasing the debt structure, depleting the assets of the estate, and significantly decreasing the distribution to creditors.

29. The alter ego claims are a key component to the Plan. The funding of the Plan by Mestek hinges in large part on the extinguishment of these claims. Thus, not only would the Mejdrech Plaintiffs be taking an asset of the estate, they would also be putting the reorganization of the Debtor in jeopardy.

30. Third, if the Mejdrech Plaintiffs were allowed to proceed with the adjudication of the liability claims, the Debtor would be forced to divert its management and employees from the

[4] The terms of the settlement are set forth in a letter agreement between the Debtor, Mestek, the Mejdrech Plaintiffs and Dr. Anne Schreiber dated August 29, 2003 (the "Letter Agreement").

operations of the Debtor and the efforts to reorganize the Debtor and deal with the TCE claims pending against it in the context of a plan, thus bringing the plan process to a halt.

31. The Mejdrech Plaintiffs argue that they have been waiting for over two years for their day in court and will suffer material harm if the Motion is not granted. The Committee fails to see how relief from the automatic stay to litigate the liability issues only puts the Mejdrech Plaintiffs in a better position. The Mejdrech Plaintiffs are not seeking to litigate the damage issues of their property damage action and thus are not seeking to liquidate their claims. Even if they were seeking to liquidate their claims, the Mejdrech Plaintiffs would not be entitled to receive any sort of distribution on their claims until a plan is confirmed.

32. Based upon the foregoing it is difficult to see how the Mejdrech Plaintiffs would fare better by torpedoing the plan process, especially when the Mejdrech Plaintiffs already have a multi-million dollar settlement in place, which they have not terminated.

D. The Mejdrech Plaintiffs Have Not Shown They Are Likely to Succeed on the Merits of Their Property Damage Action

33. The Mejdrech Plaintiffs assert, in violation of the Letter Agreement, that their settlement with the Debtor and Mestek, along with the mere filing of other TCE actions against the Debtor and Mestek show that they will be successful on the merits of their property damage action.

34. The use of settlement negotiations and agreements to show liability violates the most basic principles of evidentiary law.

> Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. . . .

Fed. R. Evid. 408 (emphasis added). Moreover, the Letter Agreement specifically prohibits the use of the settlement as evidence of liability, and moreover provides that such settlement "is not to be considered as an admission of liability." (Motion, Exh. 11.) Thus, the Court cannot consider such evidence in deciding this Motion.

35. As to the other TCE actions against the Debtor, their mere existence is not proof positive of liability on behalf of the Debtor. Only one of the actions, the DeVane Action, has resulted in a verdict against the Debtor, and that action is currently stayed by the filing of this case. Additionally, three actions have been settled: the Leclerq Action, the property damage action of the Mejdrech Plaintiffs and the Schreiber Action. Like the settlement with the Mejdrech Plaintiffs, the settlement agreement with the Leclerq plaintiffs concedes no liability. With regard to the Schreiber Action, said settlement is covered under the Letter Agreement and, thus, there is no admission of liability by the Debtor or Mestek as to the Schreiber claims.

CONCLUSION

The relief request by the Mejdrech Plaintiffs may not be granted, as the Mejdrech Plaintiffs fail to meet the requirements set forth in Rexene to establish cause to modify the automatic stay. It is clear from the foregoing facts and circumstances of this case that the Debtor and its creditors would suffer substantial harm and prejudice if the Motion was granted.

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WHEREFORE, the Committee respectfully prays the Court enter an order denying the Motion and granting such other and further relief as the Court deems just and necessary.

Dated: March 3, 2004,

KLEHR HARRISON HARVEY BRANZBURG & ELLERS, LLP

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