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.	:	**Objection Deadline: June 15, 2004** **Hearing Date: June 22, 2004 @ 10:30 a.m.**
	:	**Related Docket No. 862**

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO THE SECOND AMENDED DISCLOSURE STATEMENT FOR THE FIRST AMENDED CHAPTER 11 PLAN OF REORGANIZATION PROPOSED BY MET-COIL SYSTEMS CORPORATION AND MESTEK, INC., AS CO-PROPONENTS

The Official Committee of Unsecured Creditors (the "Committee") of Met-Coil Systems Corporation (the "Debtor") by and through its undersigned counsel, hereby asserts this Objection to the *Second Amended Disclosure Statement* (the "Second Amended Disclosure Statement" or "Disclosure Statement"[1]) *Pursuant to Section 1125 of the Bankruptcy Code for the First Amended Chapter 11 Plan of Reorganization* (the "Plan") *Proposed by Met-Coil Systems Corporation and Mestek, Inc., as Co-Proponents*, and avers in support thereof as follows:

INTRODUCTION

1. The Committee objects to the approval of the Disclosure Statement as presently drafted because the plan proponents fail to provide adequate information to creditors on a number of critical elements of the Plan. The principle deficiencies fall into three categories: (i) third-party releases; (ii) disclosures regarding the liquidation analysis; and (iii) disclosure of feasibility risks.

2. With respect to third-party releases, the Disclosure Statement fails to provide adequate disclosure of the extent of the non-debtor third-party releases that are a central element

to the Plan. The plan proponents do not provide adequate information concerning the identity of the parties to be released or the scope of the releases that are included in the Plan. While the language concerning these releases, as presently drafted, calls into serious question the ability of the plan proponents to confirm the Plan, at a minimum, for disclosure purposes, creditors must be given full and complete information concerning the scope of the releases, especially since creditors' rights to pursue responsible parties for relief in connection with the Debtor's affairs will be extinguished.

3. With regard to the liquidation analysis, the Disclosure Statement fails to fully describe, among other things, the nature of the claims against the Debtor's ultimate parent, Mestek, Inc. ("Mestek"), that are being released under the Plan. Similarly, the valuation of these claims against Mestek as well as potential contribution claims against adjoining property owners have not been attributed any value, but rather are listed as "TBD." These amounts may significantly impact distributions under Chapter 7. The liquidation analysis applies incomplete facts and is formulated under an incorrect standard. Thus, the Disclosure Statement not only fails to provide adequate information to creditors by employing an incorrect standard of valuation for the liquidation analysis, it completely deprives creditors of any ability to make a meaningful choice when voting on the Plan.

4. The Disclosure Statement is also deficient in identifying and disclosing feasibility risks, which again, are central to a creditor's assessment of the Plan and the distributions provided for thereunder.

5. For these reasons, the Disclosure Statement must not be approved.

[1] For citation purposes, the Second Amended Disclosure Statement will be abbreviated as "Disc. Stm. at p. _____."

BACKGROUND

History of the Case.

6. The Debtor is a metal forming company comprised of two separate operating divisions: The Lockformer Company ("Lockformer") and Iowa Precision Industries, Inc. ("IPI"). Through these divisions, the Debtor manufactures advanced sheet-metal-forming equipment, fabricating equipment and computer controlled fabrication systems for HVAC sheet metal contractors, steel service centers and custom roll formers in the global market. (Disc. Stm. p. 15.)

7. The Lockformer Company has been involved in significant and continuing litigation related to the alleged discharge of trichloroethylene ("TCE") onto or into the soil of the Lockformer site, located in Lisle, Illinois (the "Environmental Claims"). (Disc. Stm. at pp. 17-22.) Mestek, which acquired the Debtor in 2000, is also named as a defendant in many of the Environmental Claims on the grounds that Mestek is directly responsible for consequences of the contamination or is indirectly liable as an alter ego of the Debtor.

8. On August 26, 2003, the Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code §§ 101 *et seq.* (the "Bankruptcy Code"), and is operating it business as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108. According to the Disclosure Statement, the Debtor's Chapter 11 filing was caused by the significant liabilities incurred by the Debtor as a result of the discharge of TCE at its facilities in Lisle, Illinois. (Disc. Stm. at pp. 17-22.)

9. On September 5, 2003, the Office of the United States Trustee conducted an organizational meeting and on September 11, 2003 appointed the Committee pursuant to 11 U.S.C. § 1102. No trustee or examiner has been appointed.

10. On September 15, 2003, the Committee selected Klehr, Harrison, Harvey, Branzburg & Ellers, LLP as its counsel and Parente Randolph, LLC ("Parente") as its accountants and financial consultants. On October 20, 2003, the Court entered an order approving the retention of Klehr Harrison as counsel to the Committee and Parente as accountants and financial consultants to the Committee.

11. On October 20, 2003, the Court entered an order approving Eric Green as the Representative for Future Claimants (the "Futures Representative") injured by the discharge of TCE at the Debtor's facilities in Lisle, Illinois.

12. On November 5, 2003, the Debtor and Mestek filed their *Disclosure Statement pursuant to Section 1125 of the Bankruptcy Code for the Chapter 11 Plan of Reorganization* (the "Plan") *Proposed by Met-Coil Systems Corporation and Mestek, Inc., as Co-Proponents* (the "Initial Disclosure Statement"). Numerous objections were filed by creditors, including the Committee, as the Initial Disclosure Statement was so devoid of information that even the most basic terms of the proposed plan could not be determined. As a result of ongoing negotiations with the Futures Representative and the lack of information in the initial Disclosure Statement, the hearing on the Initial Disclosure Statement was postponed.

13. On February 27, 2004, personal injury class action plaintiffs, Teresa Mejdrech *et al*. (the "Mejdrech Class"), filed a motion for relief from the automatic stay to proceed to trial against Honeywell International, Inc., the manufacturer of the TCE, and Mestek.

14. On March 8, 2004, the Court denied the Mejdrech Class' motion for relief from stay and enjoined the Mejdrech Class from proceeding to trial against Honeywell and Mestek until June 22, 2004. However, the Court warned that if the Debtor did not file an amended

disclosure statement by May 24, 2004, the Court would consider lifting the automatic stay. (See Transcript of March 8, 2004 Hearing, p. 71.)

15. On April 12, 2004, the Committee filed a Motion to Authorize it to Commence and Prosecute Certain Actions on behalf of the estate, including claims the estate may possess against Mestek.

16. On May 21, 2004, the Debtor and Mestek filed their *First Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the First Amended Chapter 11 Plan of Reorganization Proposed by Met-Coil Systems Corporation and Mestek, Inc. as Co-Proponents* (the "First Amended Disclosure Statement"). The Debtor also filed on May 21, 2004, a revised *Order Approving (A) the Disclosure Statement Pursuant to 11 U.S.C. § 1125; (B) the Form of Solicitation Materials and Ballots; (C) Procedures for Solicitation and Tabulation of Votes to Accept or Reject Proposed Plan of Reorganization; (D) Voting Deadline and Record Date; and (E) the Date and Time of the Filing of Objections to, and the Hearing on Confirmation of the Plan* (the "Disclosure Statement and Solicitation Order"). Thereafter, on May 26, 2004, the Debtor and Mestek filed the Second Amended Disclosure Statement.

The Environmental Litigation

17. The Debtor and Mestek have been embroiled in litigation in Illinois brought by those who have allegedly been affected by the contamination. (Disc. Stm. p. 19.) Additionally, the Debtor and Mestek have incurred significant cost and expense to address regulatory enforcement actions and remediation of the TCE contamination. To date, the Debtor has settled one class action lawsuit pre-petition for $10 million (Disc. Stm. p. 19), one class action lawsuit post-petition for $12.5 million (*Id.*) and a personal injury action post-petition for $6 million (Disc. Stm. at pp. 21-22.) Mestek is also a named defendant in each of these actions. The

Debtor was also adjudged liable to a third group of plaintiffs in an Illinois jury verdict rendered in July 2003 in the sum of $2,368,500. (Disc. Stm. p. 19.)

18. In addition to these claims, the Debtor and Mestek are defending at least five other actions brought by persons allegedly affected by the TCE contamination. (Disc. Stm. at pp. 20-21.) 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. 22 and 73.) Finally, the Debtor, Mestek and Honeywell are involved in litigation in this Court and in Illinois 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. p. 22.) This dispute appears to be resolved.

19. Mestek faces significant exposure for the Debtor's environmental liabilities. Mestek is a named defendant in some of the personal injury and property damage claims that have been filed against the Debtor.

The Disclosure Statement's Description of the Plan

20. The Disclosure Statement provides that the Plan is a restructuring transaction whereby Mestek or the Winning Plan Sponsor[2] will acquire the common stock, along with insurance proceeds and the Contribution Actions in exchange for funding the Debtor's plan of reorganization. (Disc. Stm. at pp. 3-4.) As further consideration, the Disclosure Statement provides that Mestek or the Winning Plan Sponsor will also receive the benefits of a channeling injunction (the "TCE Channeling Injunction"). (Disc. Stm. p. 4.) According to the Disclosure Statement, under the proposed TCE Channeling Injunction, all non-settled and future TCE

[2] Unless otherwise defined, all capitalized terms shall have the same meaning ascribed to them in the Second Amended Disclosure Statement.

related personal injury claims will be channeled into a TCE personal injury trust (the "TCE Trust") and resolved according to the TCE PI Trust Distribution Procedures. (Disc. Stm. at pp. 49-54.) As a result of the TCE Channeling Injunction, TCE personal injury claimants (both present and future) will be enjoined from bringing actions for their alleged injuries against the Debtor, Mestek and its affiliates (including Formtek), and insurers who have reached settlements with the Debtor for the payment of the Debtor's claims under their respective insurance policies. (*Id.*) In addition to the TCE Channeling Injunction, the Disclosure Statement states that the Plan provides for Mestek and its affiliates (including Formtek) to be released from all claims the estate or any creditor may have against them. (Disc. Stm. at pp. 48-49, 63-64.)

21. Because the Plan provides for the sale of the Debtor's stock and certain assets to Mestek, the plan provides for the solicitation of higher and better offers as required under applicable law. (Disc. Stm. p. 3.) Mestek's opening bid is described in Article II.A of the Second Amended Disclosure Statement. Specifically, Article II.A provides that in consideration for the new common stock of the reorganized Debtor, assignment of the proceeds of unsettled claims arising under Insurance Policies for TCE claims after the Confirmation Date, the Contribution Actions, the TCE Channeling Injunction and broad releases protecting Mestek from liability, *Mestek* will contribute the following:

a. its pre-petition secured claim in the amount of $7,024,000;

b. its pre-petition unsecured claim in the amount of $7,253,000;

c. funding for the Unsecured Claims Distribution Fund;

d. funding for the TCE Litigation Distribution Fund;

e. the Mejdrech settlement amount of $12,500,000;

f. the Schreiber settlement amount of $6,000,000;

g. a guarantee of up to $3 million of environmental liabilities; and

h. approximately $2 million with respect to the Mejdrech hook ups.

(Disc. Stm. at pp. 3-4.)

22. Since the Debtor's Chapter 11 filing was caused by the environmental contamination at the Lisle, Illinois facility, the most important feature of the proposed Plan is the release of the Debtor, Mestek and its affiliates (including Formtek) from further liability for the contamination. To accomplish this objective, the Plan proposes a non-debtor injunction under Section 105(a) of the Bankruptcy Code in favor of Mestek and its affiliates (including Formtek) and the Settling Insurers from any further liability to the Debtor, its creditors or environmental claimants.

OBJECTION TO THE ADEQUACY OF INFORMATION CONTAINED IN THE DISCLOSURE STATEMENT

I. Legal Standards For Approval Of The Disclosure Statement

23. Section 1125 of the Bankruptcy Code requires that a disclosure statement provide "adequate information," defined as:

> information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan.

11 U.S.C. § 1125(a)(1). As the Third Circuit has stated:

> The importance of full disclosure is underlaid by the reliance placed upon the disclosure statement by the creditors and the court. Given this reliance, we cannot overemphasize the debtor's obligation to provide sufficient data to satisfy the Code standard of 'adequate information.'

Oneida Motor Freight, Inc. v. United Jersey Bank, 848 F.2d 414, 417 (3d Cir. 1988), *cert. denied*, 488 U.S. 967 (1988).

24. The principle of disclosure is of prime importance to the reorganization process. *In re V. Savino Oil & Heating Co.*, 99 B.R. 518 (Bankr. E.D.N.Y. 1989). The purpose of a disclosure statement is to provide a reasonable and typical investor with information sufficient to make an informed decision as to the plan. S.REP. NO. 989, 95th cong., 2d Sess., 121, *reprinted in* 1978 U.S.CODE CONG. & AD.NEWS 5787, 5907. The Court and the debtor's creditors rely heavily on the disclosure statement in determining whether to approve the proposed plan. *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3rd 355, 362 (3rd Cir. 1996). Because of this reliance, a disclosure statement must contain complete, accurate, and factual information, not opinions, half-truths, misrepresentations, or silence to satisfy the Bankruptcy Code standard of 'adequate information.' " *See Oneida Motor Freight, Inc*, 848 F.2d at 417. Therefore, a party seeking protection under Chapter 11 has "an affirmative duty to provide creditors with a disclosure statement containing adequate information to enable a creditor to reach an informed judgment about the plan." *Krystal Cadillac–Oldsmobile GMC Truck, Inc. v. General Motors Corporation*, 337 F.3d 314, 321 (3rd Cir. 2003) (internal quotations omitted).

25. In determining whether the information disclosed in a disclosure statement is adequate, the sufficiency of the information is analyzed under a flexible standard on a case-by-case basis. *In re A.C. Williams Co.*, 25 B.R. 173, 176 (Bankr. N.D. Ohio 1982); *see also In re Texas Entrusion Corp.*, 844 F.2d 1142, 1157 (5th Cir. 1988) (same); *In re Basham*, 167 B.R. 903, 908 (Bankr. W.D. Mo. 1994) ("flexible approach that encompasses the totality of circumstances presented in each case"); *In the Matter of CDECO Maintenance Construction*, 101 B.R. 499, 500 (Bankr. N.D. Ohio 1989) ("In weighing the extent of necessary disclosure, it is appropriate to

take into account the creditor body and others for whose enlightenment the disclosure statement is designed") and *In re Metrocraft Publishing Services, Inc.*, 39 B.R. 567 (Bankr. N.D.Ga. 1984) (case-by-case basis). As set forth herein, the Disclosure Statement fails to provide adequate information on a number of important issues and cannot be approved.

II. The Defined Terms in the Disclosure Statement Are Vague and Confusing

A. The Disclosure Statement Fails To Inform Creditors Who Is Being Released

26. As noted above, the most important element of the proposed Plan is the third-party release provided to Mestek and Mestek's affiliates from any future liability for the environmental contamination, and other liabilities. While creditors' rights against a number of non-debtor parties will be extinguished through the Plan, the Disclosure Statement is replete with defined terms related to the releases that are so vague and confusing that creditors cannot determine who is being released or the scope of the releases that are being provided. Adding to the confusion is the fact that there are defined terms within defined terms that make it impossible to understand the scope of the releases or the identities of all parties who are being released. This endless maze of defined terms within defined terms requires the skill of a cryptologist to decipher. As a result, creditors simply cannot make a meaningful choice in voting on the releases since the full extent of the impairment of creditors' rights is not clear.

27. For example, throughout the Disclosure Statement and, more importantly, in the release provisions contained within the Plan, is the term the "Mestek Affiliates." (*See e.g.* Disc. Stm. pp. 48-49, 53-55, 63-64.) While the Plan proposes to provide a non-debtor, third-party release to all the "Mestek Affiliates", the identities of these entities cannot be determined.

28. The Glossary of Terms that accompanies the Plan (the "Glossary") defines the "Mestek Affiliates" as "Mestek, Formtek and each of their respective Representatives." (Plan,

Exh. 1, pp. 15-16.) The term "Representatives" is then defined as, "with respect to an Entity, former, current and future affiliates, subsidiaries, divisions, merged or acquired companies or operations, members, officers, directors, shareholders, employees, consultants, agents, advisors, attorneys, accountants (including independent certified public accountants), financial advisors, other professionals, other representatives, successors, executors, administrators, heirs, assigns and predecessors." (Plan, Exh. 1, p. 17). "Entity" is defined to include "any person, estate, trust, government unit and the United States Trustee." (Plan, Exh. 1, p. 8.)

29. Based upon the definitions provided in the Glossary, it appears the "Mestek Affiliates" include any entity that ever had, has or will have any affiliation or connection with Mestek and/or Formtek. The precise identities of these released parties is nowhere mentioned in the Plan or Disclosure Statement, yet these unknown entities will be released if the Plan is confirmed.

30. Another completely inadequate definition is found in Article VII.G(8) of the Disclosure Statement. This section provides that on the Effective Date all "Recovery Actions" and all claims arising from or related to the Recovery Actions shall be settled and released in their entirety. (Disc. Stm. p. 49.) Thus, the Debtor proposes to extinguish these "Recovery Actions" as part of the non-debtor, third-party release provisions in the Plan.

31. The Glossary defines "Recovery Actions" as:

> any and all Causes of Action, Avoidance Actions or Claims (whether direct or derivative) including, but not limited to any legal or equitable theories, Claims, Intercompany Claims or actions of recovery: (i) seeking to extend liability to Mestek, Formtek or any other Mestek Affiliate under alter-ego, corporate-veil, vicarious liability, unity-of-interest, owner-operator, de facto-merger, substantive-consolidation theories, CERCLA or RCRA, whether asserted against Mestek, Formtek or any Met-Coil Affiliate in the Illinois Actions or otherwise; (ii) arising out of the ownership or operation of the Debtor as of and following the

> Mestek Purchase Transaction; (iii) arising out of illegal distributions or similar theories of liability; (iv) based on unjust enrichment; (v) for breach of fiduciary duty, mismanagement, malfeasance or, to the extent they are Claims or Causes of Action of the Debtor, fraud; (vi) relating to the provision of director and officer liability insurance or indemnification; (vii) arising out of any contracts or other agreements between or among the Debtor and any of the Illinois Actions Defendants; (viii) for vicarious liability or any other joint or several liability that any Illinois Actions Defendant may have in respect of any obligation that is the basis of a Claim against the Debtor; (ix) any other Claims or Causes of Action arising out of or related in any way to the Mestek Purchase Transaction that are based on an injury that affects or affected the Debtor or its creditors generally; **(x) any other Claims or Causes of Action that Met-Coil or any of its creditors, shareholders, affiliates, successors, assigns, officers, directors, representatives or agents may have against Mestek, Formtek or any other Mestek Affiliates** and (xi) the Prepetition Lender Claims.

(Plan, Exh. 1, p. 16-17.) (emphasis added).

32. The "Recovery Actions" basically include all causes of action that *any creditor* in this Chapter 11 case may have against any Mestek Affiliate, regardless of whether such cause of action is even related to the Debtor. (Plan, Exh. 1 pp. 16-17, subdiv. (x).) Moreover, the Recovery Actions that will be extinguished also include claims against the ill-defined class of "Representatives," since this definition is incorporated in the definitions of "Mestek Affiliates" and "Illinois Action Defendants."

33. Because the defined terms are so convoluted, the Disclosure Statement does anything but provide "a reasonable and typical investor with information sufficient to make an informed decision" as to the Plan.

34. While the Plan apparently proposes to release a myriad of entities, the basic structure of these protections is wholly inconsistent with the extra-ordinary remedy of a third-party release and injunction under section 105 of the Bankruptcy Code. Such sweeping releases are impermissible under the Bankruptcy Code. 11 U.S.C. § 524(e); *see also In re Zenith*

Electronics Corp., 241 B.R. 92 (Bankr. D. Del. 1999) (Walrath, C.J.); *In re Elsinore Shore Assocs*, 91 B.R. 238 (Bankr. D. N.J. 1988).

B. The Disclosure Statement Fails To Describe The Effect Of Creditors' Votes On The Plan Or Any Basis To Provide The Releases Sought

35. In addition, the plan proponents also fail to inform creditors that such releases would not release a claim of a non-consenting creditor. *See In re Digital Impact, Inc.*, 223 B.R. 1 (Bankr. N.D. Okla. 1998); *In re West Coast Video Enters., Inc.*, 174 B.R. 906 (Bankr. E.D. Pa. 1994); and *In re Monroe Well Serv., Inc.*, 80 B.R. 324 (Bankr. E.D. Pa. 1987).

36. There is no explanation in the Disclosure Statement as to why Formtek or the Mestek Affiliates, are entitled to such expansive releases, particularly as to claims that do not have any relation to the Debtor or the TCE Litigation. *See In re Continental Airlines*, 203 F.3d 203, 211 (3rd Cir. 2000) (rejecting plan provision which released and permanently enjoined shareholder lawsuits against present and former officers and directors who were not part of the bankruptcy case); *see also In re Exide Technologies*, 303 B.R. 48 (Bankr. D. Del. 2003). Nothing in the Disclosure Statement discloses any information as to the consideration to be provided by Formtek and the Mestek Affiliates that would entitle them to the protection of the Plan's release provisions.

37. The Disclosure Statement also fails to disclose key information regarding the Debtor's insurance coverage with the Settling Insurers that would allow creditors to properly assess the reasonableness of these settlements. With regard to the insurance settlements entered into pre-petition, the aggregate amount of the coverage available under each policy and the settlement amount with respect to each policy must be disclosed. The same information must be disclosed as to the post-petition insurance settlements. *See* Transcript of March 22, 2004 Hearing, p. 15. Further, to the extent any policy issued by a Settling Insurer is a primary policy,

the Disclosure Statement should indicate whether the policy limits have been exhausted. The Disclosure Statement should also disclose any retainage or deductible associated with each policy. Because the Plan provides for the pre-petition Settling Insurers to be protected by the TCE Channeling Injunction, the details of these insurance settlements must be disclosed.

III. The Disclosure Statement is Inadequate as to the Feasibility and Risks Associated with the Plan

38. The Disclosure Statement is also deficient in providing information explaining the feasibility and risks associated with the Plan and applies an inaccurate standard of value to the liquidation analysis. As a result, creditors are denied a meaningful opportunity to weigh viable alternatives to the Plan, an important purpose of the Disclosure Statement. Of the numerous elements that need to be explained to determine if the Plan is feasible, the Disclosure Statement fails to disclose: (i) the value of the claims to be released; (ii) the conditions to Confirmation and the Effective Date and the alternatives if such conditions are not met within the time required; (iii) how the Debtor will be managed and funded during the period between confirmation and the Effective Date (the "Gap Period"); (iv) how the Unsecured Creditors' Distribution Fund will be funded and managed; (v) how the Remediation Costs will be funded if the costs exceed Mestek's $3 million guarantee; and (vi) how the Debtor will meet projected operational cash shortfalls or increased cash shortfalls if the Debtor cannot achieve projected increases in sales and gross margins. The Disclosure Statement also paints an inaccurate picture of what creditors could expect to receive if the case were converted to a proceeding under Chapter 7.

A. The Disclosure Statement Provides No Value of the Claims to be Released Under the Plan

39. The Disclosure Statement fails to identify the value of the claims to be released, making it impossible for creditors to assess the adequacy of consideration provided by the non-

debtor parties that are to be protected under the releases. The Plan provides for the release of claims and causes of action that have significant value to the estate, yet the Disclosure Statement fails to provide creditors with the value of these claims and instead includes conclusory statements that the consideration exchanged for the release of these claims is significant. Such conclusory statements are not sufficient for disclosure statement purposes. *In re Sierra-Cal*, 210 B.R. 168, 172 (Bankr. E.D.Cal. 1997).

40. In *Sierra-Cal*, the issue before the Court was "whether in plan confirmation proceedings the mandatory disallowance of certain claims pursuant to 11 U.S.C. § 502(d) should be imposed when calculating the hypothetical Chapter 7 liquidation required by the 'best interest test'. *Id.* at 170. The court answered in the affirmative. *Id.* In conjunction with this holding, the Court also held "a plan proponent has an affirmative duty under § 1125 to disclose all known § 502(d) disabilities, even if that means the plan proponent must confess or inform against affiliates, insiders and friends." *Id.* In requiring § 502(d) claims to be taken into consideration when conducting a liquidation analysis, the Court explained that the hypothetical Chapter 7 liquidation analysis:

> requires estimation of disputed and contingent claims and of Chapter 7 administrative expenses. And it requires application of the Chapter 7 distribution scheme, taking into account such matters as subordinating (11 U.S.C. § 510) and recoveries from general partners (11 U.S.C. § 723) trust would be applied in a Chapter 7 liquidation . . . One such matter, as this court now holds, is mandatory disallowance of claims.

Id. at 172 (citations omitted)

41. Here, the plan proponents fail to provide creditors with an estimate of the value of the claims against Mestek that will be released. The release of Recovery Actions covers every type of claim that could possibly be brought against the Mestek Affiliates from the beginning of

time to the end of time. Creditors must know whether the consideration offered for such a broad release is a fair exchange. Under the present version of the Disclosure Statement, creditors have no way of knowing whether the estate is being dealt with at arm's length as to the value of the claims to be released.

42. In addition to the plan proponents' failure to fully describe the value of the claims against Mestek that are being released, their explanation of the Mestek claims is also seriously deficient. Recently, the Committee has conducted a detailed investigation of Mestek and the Debtor pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure. The Committee's investigation included the review of thousands of pages of documents and examinations of five witnesses. The investigation has made it clear that the Debtor possesses claims against Mestek that extend far beyond the "alter ego" claims that are identified in the Disclosure Statement. For instance, the Debtor fails to describe any fiduciary duty claim that it possesses against Mestek. The Committee's investigation has developed substantial factual information to support such a claim.

43. While the Debtor was insolvent no later than early 2002, Mestek, through its dominance and control of the Debtor's affairs, failed to carry out the fiduciary duty owed to creditors once the Debtor arrived within the "zone of insolvency". Rather than have the Debtor file a Chapter 11 proceeding in early 2002, the Debtor instead elected to settle one of the class action property damage lawsuits in which Mestek was also a named defendant. The entire $10 million settlement amount was paid by the Debtor, using the Debtor's cash and a loan from a commercial lender, MB Financial. Even though the Debtor was already insolvent at the time of this settlement, Mestek derived a substantial benefit from the settlement since the alter ego claims against Mestek, which the trial judge had allowed to go to the jury, were also settled and

released as part of the $10 million dollars paid to the plaintiff class in the settlement. Thus, while the settlement deepened and worsened the Debtor's pre-existing insolvency, Mestek benefited from the settlement by obtaining a release from potentially devastating alter ego claims for absolutely no consideration whatsoever.

44. The Committee's investigation has also established a number of challenges to Mestek's existing secured and unsecured claims against the Debtor. Many of the facts developed in the Committee's investigation have been designated "Confidential" by Mestek and the Debtor pursuant to existing confidentiality agreements and orders. While the Committee disagrees with the breadth of the confidentiality designations that Mestek and the Debtor have imposed upon the record, the Committee is required to honor the confidentiality agreements at this time. The Committee cannot, therefore, recite all of the facts that the Committee has developed to support claims that the Debtor's estate, or individual creditors, may possess against Mestek. However, since the Debtor's analysis does not reference breach of fiduciary duty claims, lien challenges or the effect of Mestek's orchestration of the 2002 litigation settlement, based on these facts alone, the Disclosure Statement simply does not provide sufficient information concerning the merits of the potential claims against Mestek.

B. The Conditions to Confirmation and to the Effective Date are Vague and Incomplete

45. The Disclosure Statement sets forth several conditions precedent to confirmation and for the Plan to become effective. The application of several of these conditions is too vague for creditors to determine what constitutes fulfillment of such conditions.

46. For example, condition to confirmation 1(a)(x) provides that the Confirmation Order shall include a finding, determination and ruling "each of the Recovery Actions against the Illinois Action Defendants and the Mestek Affiliates and the other persons or entities as set forth

in Section 7.03 of the Plan will be fully settled and released as of the Effective Date." (Disc. Stm. at pp. 60-61.)

47. Condition 1(a)(x) fails to address the potential alter ego, breach of fiduciary duty and lien avoidance actions detailed by the Committee.

48. Condition (d) to confirmation requires that "no *litigation* has been commenced by the Debtor, any Committee or *any* creditor against any of the Illinois Actions Defendants, the Mestek Affiliates or other party to be released pursuant to Section 7.03 of the Plan." (Disc. Stm. p. 62)(emphasis added). The term "litigation" is not clearly defined. Does "litigation" in the context of condition (d) mean only matters relating to the Debtor? Does it mean any causes of action, whether or not they are related to the TCE claims or the bankruptcy? Further, it is unclear who the parties are for which no litigation can be commenced or pending. What does "any creditor" encompass? Who exactly are the Mestek Affiliates? The plan proponents make no effort to answer these questions, which are fundamental to understanding when and under what circumstances the Plan will become effective.

49. The Disclosure Statement also fails to describe the consequences to the Debtor's estate if there is a delay in the satisfaction of the Effective Date conditions. First, there is no explanation as to what will happen if any of the conditions to the Effective Date are not met within 30 days after entry of the Confirmation Order. There is also no information as to whether the Debtor and Mestek (or the Winning Plan Sponsor) are willing to extend the 30-day deadline to allow the Effective Date conditions to be met, and if so, for how long. Alternatives to implementing the Plan if certain conditions to confirmation and the Effective Date are not met is necessary given the plan proponents' own statement in the Disclosure Statement that there is no

guarantee that the Debtor and Mestek will waive any of the conditions and that the "satisfaction of many of these conditions is beyond the control of the Debtor." (Disc. Stm. p. 87.)

50. Second, there is no information as to whether any of the conditions requiring final orders approving litigation settlements can even be entered within thirty days of confirmation. It may take weeks or months before orders in these various actions are presented, entered and become final. The Disclosure Statement provides no explanation as to how these conditions can be realistically met.

51. Third, the Effective Date cannot occur until the Confirmation Order becomes final, yet the 30-day period begins to run on the date the Confirmation Order is entered – 10 days before the order becomes final. At a minimum, the 30-day period should not begin to run until the Confirmation Order becomes final, to allow additional time for the Effective Date conditions to be met. Finally, condition (d) to the Effective Date being the same as condition (d) to confirmation, has the same problems set forth above as to such condition.

C. There is No Information as to How the Debtor Will be Managed and Funded During Gap Period

52. The Disclosure Statement provides that the Debtor will continue to administer the estate and its properties. (Disc. Stm. at p. 48.) There is no explanation in the Disclosure Statement as to who will manage the operations of and fund the Debtor during the Gap Period, and for how long if the Gap Period goes beyond 30 days from the entry of the Confirmation Order.

53. The Debtor's operations cannot lie in limbo until the occurrence of the Effective Date, especially when the Debtor states in the Disclosure Statement that the delay between confirmation and the Effective Date may be "substantial". (Disc. Stm. p. 86.) The Debtor's operations need to be managed and funded. Creditors need to know who will be at the helm and

how much it will cost the estate to continue the Debtor's business during this period. Further, creditors need to know who will provide the necessary funding for the Debtor during this period and whether the funding will be considered as part of the consideration for the Debtor's stock and certain assets and the releases provided under the Plan.

D. There is No Information as to How the Unsecured Creditors Distribution Fund Will be Funded and Managed

54. The Disclosure Statement also fails to disclose how much will be funded to the Unsecured Creditors Distribution Fund. The only information provided to creditors is the Debtor's and Mestek's estimation of the amount of the Fund. There is nothing in the Disclosure Statement that states whether Mestek (or the Winning Plan Sponsor) has any minimum funding obligations as to the Unsecured Creditors Distribution Fund, or who provides funding for the fund if it exceeds the plan proponents' estimation.

55. The Disclosure Statement also fails to disclose who will be the disbursing agent for the Unsecured Creditors Distribution Fund; the duties of the disbursing agent (e.g. the monitoring of outstanding claims objections); the compensation for the disbursing agent; and how such compensation shall be paid (i.e. paid out of the Fund or paid by Mestek or the Winning Plan Sponsor). There is not even a funding or trust agreement that provides for the implementation and management of the Unsecured Creditors Distribution Fund. Without establishing parameters as to the funding and management of the Unsecured Creditors Distribution Fund, the unsecured creditors cannot assess the procedure formulated by the Debtor for payment and administration of claims. Moreover, the Disclosure Statement details no information about whether the funds to be provided for distribution to unsecured creditors are protected and whether the collection of these funds puts creditors at risk.

E. There is no Information as to How the Remediation Costs Will be Funded Should They Exceed Mestek's Consideration

56. The Disclosure Statement fails to provide how the remediation costs will be funded, if the costs exceed $3 million. Pursuant to the Disclosure Statement, Mestek will guarantee up to $3 million dollars of the remediation costs for the Lockformer site. (Disc. Stm. p. 4.) There are no provisions in the Disclosure Statement that provide for contingency funding of the Remediation Costs. This is an important disclosure in light of the Debtor's negative cash flow in the projections provided by the Debtor.

F. The Liquidation Analysis is Inaccurate and Misleading

57. One of the key components in assessing the risk in voting in favor of or against confirmation of a plan is the liquidation analysis. Whether a plan is truly in the best interests of creditors as required under 11 U.S.C. § 1129(a)(7) hinges on the comparison of the recovery to creditors under the plan versus the recovery creditors would receive if the debtor's assets were liquidated under Chapter 7.

58. The liquidation analysis attached to the Disclosure Statement (the "Liquidation Analysis") is both inaccurate and misleading. First, the values assigned to various assets and liabilities of the estate are misstated. Second, the valuation method used is not consistent with applicable law.

1. Inaccuracies as to Values of Assets and Liabilities

59. The plan proponents fail to provide information that would give creditors sufficient information as to the nature of the liabilities that the Debtor faces and what creditors could expect to receive if claims against Mestek and other third parties were pursued.

60. With regard to the Debtor's liabilities, the values assigned thereto are based on unsupported or faulty assumptions. First, the plan proponents assign a value of $7,024,000 to

Mestek's secured claim. This figure fails to take into consideration that Mestek's liens could be subject to challenge. Second, the Liquidation Analysis shows multi-million dollar values assigned to the TCE property damage claims and the TCE personal injury claims. It is unclear how the plan proponents arrived at these figures when these claims are unliquidated. (*See* Disc. Stm. p. 11, stating the estimated claims amount for Classes 5 and 6 are unliquidated.) The plan proponents provide no support for these valuations in the Disclosure Statement. Also, in the Summary of Classification and Treatment of Claims section of the Disclosure Statement, an estimated value of $10,659,972.84 is assigned to the TCE Litigation Claims *and* the IEPA claims together. Yet, the Liquidation Analysis separates these two types of claims, assigning the TCE Litigation Claims a value of $16.7 million and the IEPA claim a value of $3 million. It is unclear how the plan proponents arrived at these figures in their analysis. Third, the plan proponents value the general unsecured claims (excluding Mestek) and convenience claims at a total of $4.7 million, but do not indicate whether this amount includes the claims of insiders and the value of such insider claims.

61. As to the Debtor's assets, the Liquidation Analysis fails to assign any value to the Contribution Actions and claims against Mestek and Formtek, instead designating these values as "TBD."[3] This will not suffice as adequate information. *Sierra-Cal*, 210 B.R. at 176 ("[T]he debtor would need to point out that there are two theories under which its affiliate SCF received avoidable transfers that could trigger the § 502(d) disability. In other words, the plan proponent must inform against its affiliate.") The plan proponents must provide an estimation of the value of these claims, otherwise creditors will not know if they would receive the same or more than they would in a Chapter 7 liquidation.

[3] It is not clear whether the Debtor intends to amend the Disclosure Statement to provide this information. If so, the Committee reserves its right to further object to the Debtor's analysis.

2. The Liquidation Analysis Methodology is Inappropriate

62. The plan proponents' Liquidation Analysis is based on a "forced sale" liquidation under Chapter 7. While a liquidation analysis can be done under a forced sale scenario, it may also be done under an orderly liquidation or going concern value under Chapter 7. *In re Lason, Inc.*, 300 B.R. 227, 233 (Bankr. D. Del. 2003) (Walrath, C.J.) ("we agree… that a Chapter 7 liquidation may be done either under "forced sale" conditions or as a going concern").

63. Here, the use of a forced sale analysis is misleading as it artificially depresses the true value of the Debtor's assets in Chapter 7. Section 721 of the Bankruptcy Code authorizes a Chapter 7 trustee to operate the Debtor's business for a limited period of time, provided such operation is in the best interest of the estate and consistent with the orderly liquidation of the estate. Because the Debtor has been operating in Chapter 11 for almost a year without incurring a balance on its debtor-in-possession loan, the more accurate picture of the recovery to creditors would be through an orderly liquidation analysis.

64. Under an orderly liquidation analysis, trade accounts receivable and deposits should have a higher value as the Debtor would be able to complete work-in-progress. The Debtor's business is highly customized and therefore customers are required to place a deposit prior to the Debtor beginning work. A forced sale liquidation would not allow the Debtor to complete the work it has already started, rendering its work-in-progress worthless. Further, the Debtor would also have to refund customer deposits on unfinished work, estimated by the Debtor at $1.9 million. An orderly liquidation is more likely to have higher recovery values for the Debtor's accounts receivable and less required returns of deposits.

IV. The Disclosure Statement Fails to Adequately Describe the Risks Associated With the Feasibility of the Plan

65. Exhibit D to the Plan provides the Debtor's projections for the operation of its business upon exiting Chapter 11 through fiscal year 2008. A review of these projections by the Committee's financial advisors shows that these projections are unrealistic. While in Chapter 11, the Debtor has been operating close to break even, but has available to it debtor-in-possession financing that has been drawn upon for operating deficits. The Debtor's projections show that it will operate at a loss for fiscal years 2004, 2005, 2006 and 2007, making a profit only in fiscal year 2008. The Debtor expects to lose $1,218,000.00 in 2004; $2,758,000.00 in 2005; $919,000.00 in 2006 and $1,518,000.00 in 2007. The losses for years 2004 through 2007 are estimated at a total of $6.4 million under the Debtor's projections. There is no disclosure as to how these cash shortfalls will be handled post Effective Date.

66. There is a disclosure of a "Net Borrowing (Excess Cash)" account projecting the following annual balances:

2005	$ 937,000.00
2006	$1,855,000.00
2007	$3,373,000.00
2008	$1,367,000.00

However, there is no disclosure of the source of the cash, whether such accounts are to be used to fund operational cash shortfalls, any costs associated with this cash, or how the Debtor proposes to fund losses in excess of these amounts in any fiscal year. There is nothing in the Disclosure Statement or Plan that provides for post-Effective Date cash contributions from Mestek to the Debtor and the Debtor has not disclosed any potential third party funding source. One conclusion is clear – given the projected negative cash flows, the Debtor will not be able to

generate enough cash to fund its operations and meet its capital expenditures without some additional long-term funding, even assuming Mestek's $3 million guarantee of the remediation costs.

67. The Disclosure Statement must clearly disclose the feasibility risks associated with these projected negative cash flows. Unsecured creditors may accept less than full recovery on their claims based upon the expectation that the Debtor will emerge in strong financial condition. In assessing the Plan, the risks associated with the Debtor's ability to remain solvent and pay its debts as they come due in the future are central to creditors' assessment of the Plan. Accordingly, such risks should be clearly disclosed. Given these cash shortfalls and the significant Remediation Costs, which may exceed the Debtor's present estimates, it is unlikely that a third party would lend under these circumstances. A disclosure regarding the prospects for future borrowing, other than from Mestek, should be disclosed.

68. The Disclosure Statement should also disclose the risks associated with the aggressive projected growth in sales in light of: (i) the maturity of the industry; (ii) competition from Asian manufacturers who undercut prices and use alternative products that incorporate new technologies, such as lighter weight plastics; and (iii) the lack of any significant capital improvements. As to the projected gross margins, the Debtors forecast an increase in the average margin of 28 to 32 percent for the years 2004 through 2008. There is no support for this increase. In short, there is no disclosure that supports either the aggressive growth in sales or increase in gross margins. Thus, a clear disclosure of the risks associated herewith, and how the failure to meet these projections or margins will affect feasibility, should be included.

V. The TCE Channeling Injunction Lacks the Information Necessary to Determine Who the Beneficiaries are and Why They are Entitled to Such Protection

69. The Disclosure Statement fails to adequately describe the nature and scope of the TCE Channeling Injunction.

A. The Law Relating to Third Party Injunctions

70. Section 524(e) of the Bankruptcy Code "makes clear that the bankruptcy discharge of a debtor, by itself, does not operate to relieve non-debtors of their liabilities. *Continental Airlines*, 203 F.3d at 211. A non-debtor injunction under Section 105(a) of the Bankruptcy Code is an extraordinary remedy. *See In re Master Mortgage Investment Fund*, 168 B.R. 930, 937 (Bankr. W.D. Mo. 1994). While § 105(a) allows the court to authorize orders necessary and appropriate to carry out the provisions of the Bankruptcy Code, it does not "create substantive rights that would otherwise be unavailable under the Bankruptcy Code." *Continental*, 203 F.3d at 211 (quoting *United States v. Pepperman*, 976 F.2d 123, 131 (3rd Cir. 1992)). In order for an injunction like the TCE Channeling Injunction to be approved, this Court has held that a five-factor test must be satisfied:

> (1) an identity of interest between the debtor and the third party, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete assets of the estate;
>
> (2) substantial contribution by the non-debtor of assets to the reorganization;
>
> (3) the essential nature of the injunction to the reorganization to the extent that, without the injunction, there is little likelihood of success;
>
> (4) an agreement by a substantial majority of creditors to support the injunction, specifically if the impacted class or classes "overwhelmingly" votes to accept the plan, and
>
> (5) provision in the plan for payment of all or substantially all of the class or classes affected by the injunction.

Zenith, 241 B.R. at 110.

B. The "Protected Parties" Cannot be Identified

71. The TCE Channeling Injunction is designed to protect certain "protected parties" from liability stemming from any of the TCE personal injury claims. Embedded in Article 7(J)(1), which describes who is to benefit from the TCE Channeling Injunction, is the defined term "Protected Party", which is separately described in the Glossary as follows:

> **"Protected Party"** means (a) the Debtor; (b) the Reorganized Debtor; (c) the Mestek Affiliates to the extent Mestek is the Winning Plan Sponsor or otherwise provides sufficient consideration to obtain the TCE Channeling Injunction; (d) the Winning Plan Sponsor, if other than Mestek; (e) the Legal Representative; (f) the Settling Insurers; (g) the Representatives of the parties in (a)-(f); (h) any Entity that, pursuant to this Plan or otherwise after the Effective Date, becomes a direct or indirect transferee of, or successor to, the Debtor, the Reorganized Debtor, the Mestek Affiliates, (if condition (c) is satisfied, the Winning Plan Sponsor, the Settling Insurers, or the Representatives (but only to the extent that liability is asserted to exist as a result of its becoming such a transferee or successor); (i) any Entity that, pursuant to this Plan or otherwise after the Effective Date, makes a loan to the Debtor, the Reorganized Debtor, the Legal Representative, the Mestek Affiliates (if condition (c) is satisfied), the Winning Plan Sponsor, (but only to the extent that liability is asserted to exist as a result of its becoming such a lender or to the extent any pledge or assets made in connection with such a loan is sought to be upset or impaired).

(Plan, Exh. 1, pp. 15-16.)

72. As with many of the defined terms in the Disclosure Statement and Plan, the definition of "Protected Party" is broad and vague and does not provide necessary information to creditors as to who will receive the benefits of the injunction. The definition of "Protected Party" includes references to eleven other defined terms. While a number of these terms can be deciphered, some of the terms are hopelessly vague. Based upon the definitions employed by the plan proponents, the Plan will forever enjoin a seemingly endless network of affiliates of affiliates that are not identified in the Plan. The "disclosure" of this vague web of released

parties fails to provide adequate information to creditors to assess the concerns highlighted by this Court in *Zenith.*

73. As set forth in this Objection, there is no disclosure of the value of the claims to be released under the Plan. While the plan proponents have included a description of the various litigation proceedings that are pending against Mestek and the Debtor, the Disclosure Statement provides no analysis as to Mestek's liability. Thus, creditors not only are unable to determine who is being released under the TCE Channeling Injunction, they are also unable to determine the value of the claims covered by the injunction. Without such disclosure, any consideration as to whether Mestek has offered a "substantial contribution" is not possible.

C. The Trustee of the TCE PI Trust Must be Disclosed

74. The Plan and Disclosure Statement provide that a trustee for the TCE PI Trust be approved. At present, however, the trustee has not been identified and no further information about the trustee is provided.

75. The Disclosure Statement should not be approved until the trustee is identified and all information concerning his or her retention is disclosed.

D. The Value of the Consideration to be Provided by certain Parties in Exchange for the Protection of the TCE Channeling Injunction Cannot be Determined

76. The Disclosure Statement provides that the Debtor, Mestek, Formtek, "Mestek Affiliates" and the Settling Insurers shall be the beneficiaries of the TCE Channeling Injunction provided by the Plan. (Disc. Stm. p. 54.) While the consideration to be provided by Mestek and the Settling Insurers is described, there is no disclosure as to the consideration to be given by Formtek and the Mestek Affiliates in exchange for these releases and the TCE Channeling Injunction. In order for a party to be released of certain liabilities and benefit from the TCE

Channeling Injunction, the party must provide *substantial* consideration in return. *Zenith*, 241 B.R. at 110.

77. In order for the release provisions and TCE Channeling Injunction to be evaluated and for creditors to determine to whom they apply, there must be a disclosure of the consideration that each proposed protected party intends to provide in exchange for these protections.

78. Given the extraordinary remedy of The TCE Channeling Injunction, at a minimum, the proposed Disclosure Statement must include a complete and adequate disclosure of the identities of the parties that will be protected by the injunction. Moreover, to the extent the plan proponents propose to include other parties who have yet to contribute to the Plan in the injunction, further disclosure of the terms and conditions of these settlements, with sufficient opportunity for creditors to consider them in deciding whether to vote in favor of the Plan, must be provided. Under the existing proposal, the plan proponents would have complete discretion as to whether to include third parties in the Section 105(a) injunction without any disclosure of the terms and conditions of the contributions to be made by these parties to the reorganization effort. Obviously, this scheme does not satisfy the required disclosure of adequate information under Section 1125 of the Bankruptcy Code.

VI. The Committee's Positions Are Omitted From The Disclosure Statement

79. The Committee is the representative of the Debtor's non-insider, general unsecured creditors. Thus, it is imperative that the Committee's constituents know what their representative body thinks of the Plan. Notwithstanding the importance of the Committee's role in the plan process, there is nothing in the Disclosure Statement that sets forth the Committee's position on vital elements of the Plan. First, the Committee does not believe the Plan is in the best interests of creditors and the Introduction to the Disclosure Statement should inform

creditors of the Committee's position. To cure this omission, the Committee believes the following statement should be included in the Introduction section of the Second Amended Disclosure Statement:

> The Committee disagrees with the Debtor and Mestek that the estate and its creditors would be best served by confirmation of the Plan. The Committee believes the Plan does not provide for the maximum recovery to creditors and urges creditors to reject the Plan.

80. Second, Article IV.B of the Disclosure Statement describes the Debtor's relationship with Mestek and states that the Debtor "operates as a *separate* subsidiary" of Mestek, independent of Mestek's control. (Disc. Stm. p. 15.) (emphasis added.) Although the Committee has been investigating potential alter ego and breach of fiduciary duty claims against Mestek for several months, there is nothing in Article IV.B that indicates that the Committee disputes these statements and is pursuing alter ego and breach of fiduciary duty claims against Mestek. Because the issue of Mestek's liability to the estate could have a profound affect on the distribution to creditors under the Plan, and the sufficiency of the consideration to be provided by Mestek, it is important that creditors are aware that the Committee believes there are viable claims against Mestek that would benefit the estate. The Committee believes the following statement should be included in Article IV.B:

> The Committee disputes the Debtor's and Mestek's assertions that the Debtor operates as a separate subsidiary of Mestek. The Committee believes Mestek controlled all of the Debtor's operations and is investigating potential alter ego and breach of fiduciary duty claims of the estate against Mestek.

81. Third, Article IV.C discusses Mestek's pre-petition loans to the Debtor and the liens Mestek allegedly has against the Debtor's assets, but fails to inform creditors of any ability to challenge the validity of those loans and any liens in conjunction therewith. The validity of Mestek's loans to and its liens against the Debtor is key to the sufficiency of the consideration to

be provided by Mestek and the releases granted in exchange therefore. The validity of Mestek's loans to and its liens against the Debtor is also crucial to the overall feasibility of the Plan. To not include a statement that the Committee is investigating Mestek's loans and liens and may seek to avoid or subordinate them is misleading to creditors. A proper analysis of the consideration to be funded by Mestek requires the vulnerability of Mestek's multi-million dollar secured and unsecured claims be disclosed.

CONCLUSION

82. For the foregoing reasons, the Disclosure Statement fails to satisfy the adequate information requirement. The Court should not approve the Disclosure Statement as drafted.

WHEREFORE, the Committee respectfully requests that the Court not approve the Disclosure Statement, together with such other and further relief as the Court deems just and proper.

Respectfully submitted,

This 15th day of June, 2004

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