

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION AT LAFAYETTE**

In re:	)	Chapter 7
	)	
CONSOLIDATED INDUSTRIES CORP.	)	Case No. 98-40533
Tax I.D. #35-1020608,	)	
	)	
Debtor.	)	

**TRUSTEE’S BRIEF IN SUPPORT OF MOTION TO  
STRIKE ENODIS CORPORATION’S OBJECTION TO TRUSTEE’S  
MOTION FOR AUTHORITY TO COMPROMISE VANSANT  
CONTROVERSY AND OTHER RELATED RELIEF**

Daniel L. Freeland, not individually but as Trustee for Consolidated Industries Corp. (the “Trustee”), respectfully submits his Brief in Support of His Motion to Strike Enodis Corporation’s Objection to Trustee’s Motion for Authority To Compromise Vansant Controversy and Other Related Relief.

**INTRODUCTION**

The instant motion arises out of a dispute involving the claims of two creditors of this estate, Bobby and Sherill Vansant (the “Vansants”). The Vansants allege that a defective Consolidated furnace leaked carbon monoxide into their home beginning in 1987 and that they were harmed as a result of this defect. The Vansants filed suit in the Alabama state court and this Court previously modified the automatic stay to allow that lawsuit to proceed.

In January, 2003, the Trustee filed a motion to approve a settlement with the Vansants, pursuant to which certain insurance carriers would pay the Vansants \$20,000. The motion did not provide that the insurance carriers or the Vansants would release the Debtor’s former parent, Enodis Corporation f/k/a Welbilt Corporation (“Welbilt”).

The initial Vansant settlement motion was filed just prior to the start of the trial of Adversary No. 99-4022, in which the Trustee has alleged, among other things, that Welbilt and Welbilt Holding

Company received fraudulent and other avoidable transfers of over \$30 million dating back to 1989. The Trustee has asserted in Adversary No. 99-4022 that the Vansants' claims, among others, provide the Trustee with the ability to use 11 U.S.C. § 544(b) to prosecute the estate's avoidance claims against Welbilt and Holding. Welbilt and Holding took a different view, asserting before the trial of Adversary No. 99-4022 began, that once the Vasant settlement was approved, the Vansants' claims no longer created standing under Section 544(b). Rather than expose the estate to this argument (even if it was without merit), the Trustee withdrew the motion to compromise and began to explore alternative methods of resolving the Vansants' claims.

Recognizing that its procedural defense was about to be lost, in February, 2003, Welbilt filed suit against the Trustee seeking an preliminary and permanent injunction to force the Trustee to proceed with the Vasant agreement. In the midst of the trial of Adversary 99-4022, the Court denied the request for preliminary relief *sua sponte*, holding that Welbilt and Holding had no legal right to enforce any agreement with the Vansants. On February 3, 2004, this Court dismissed Welbilt's complaint after a trial on the merits, holding, among other things, that the Trustee's actions with respect to the initial Vasant settlement were proper and that Welbilt had not proved that there was any legal or equitable basis for the entry of an injunction. *See* 2/3/04 Tr. at 78-79. The Court further stated that the Trustee's decision to withdraw the original Vasant settlement motion was an "appropriate decision" to avoid fighting over whether the Vasant settlement "destroys the Trustee's rights to stand upon [their claim] for the purpose of prosecuting a claim against Enodis...." *Id.* at 79.

On February 20, 2004, the Trustee filed a second motion to settle with the Vansants, pursuant to which the Vansants will receive \$25,000 from the insurance carriers and a \$2,000 general unsecured claim against this estate. Like the original motion, the new settlement agreement does not contain a release for Welbilt. The Trustee's position is that the proposed new settlement agreement

is in the estate's best interests because it resolves the Vansants' claims<sup>1</sup> and also eliminates Welbilt's Section 544(b) argument by allowing the Vansants a claim to be paid by this estate. Predictably, after having pushed for a settlement with the Vansants, Welbilt now does an about-face and objects to the settlement motion. No creditor or real party in interest in this case has objected to the motion.

Welbilt's motivation in making this Objection is both obvious and improper. Having failed to offer any credible factual defense to the Trustee's claims during trial of Adversary No. 99-4022, Welbilt's goal has been to manufacture false procedural defenses to the Trustee's ability to use 11 U.S.C. § 544(b). One of the ways that they have done so, is to suggest that any claim that is resolved no longer qualifies to create standing under 11 U.S.C. § 544(b).<sup>2</sup>

Regardless of the merits of Welbilt's Section 544(b) arguments, the Trustee, the other creditors in this case and this Court should not be required to deal with Welbilt's Objection to the Vansant agreement. On July 2, 2003, this Court found that Welbilt no longer had standing in this case to voice its views about the administration of this estate. On December 15, 2003, the Court again told Welbilt it had no standing when it objected to another settlement of claims. Nonetheless

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<sup>1</sup>During the February 3, 2004 trial of Adversary 03-4004, Welbilt's counsel suggested that one of its chief concerns was the exposure to the estate from the Vansants. 2/3/04 Tr. at 51. Ironically, the settlement of that exposure now no longer seems to be an issue.

<sup>2</sup>However, as the case law makes clear, standing under Section 544(b) is measured as of the petition date. *In re Acequia, Inc.*, 34 F.3d 800, 807-08 (9th Cir. 1994). All that matters is whether there is a creditor that holds a claim that is "allowable" as of the petition date. 11 U.S.C. § 544(b). Whether that claim is ultimately allowed or disallowed later in the bankruptcy case simply does not matter for purposes of measuring standing under 11 U.S.C. § 544(b). *See, e.g., Acequia*, 34 F.3d at 807; *Official Committee of Asbestos Claimants of G-I Holdings, Inc. v. Heyman*, 277 B.R. 20, 34 (S.D.N.Y. 2002) (holding that a creditor need not file a proof of claim to permit the trustee to stand in its shoes under § 544(b)); *In re Bushey*, 210 B.R. 95, 101-02 (B.A.P. 6th Cir. 1997) (holding that trustee had standing under § 544 because a creditor existed at the time of the transfer, even though, prior to the filing of the case, the debtor had paid off the debt and incurred new debt with the same creditor); *In re Porter*, 37 B.R. 56, 67 (Bankr. E.D. Va. 1984) (holding that trustee had standing under § 544(b) to step into the shoes of a contingent creditor). Simply put, Welbilt's gamesmanship should have no bearing on how the Court ultimately rules on the Trustee's fraudulent transfer and other claims.

Welbilt persists in filing objections that it has no standing to make. The Court should strike the current objection for the same reason it struck the multiple claims objections Welbilt filed in March, 2003 and its objection to the Lawson settlement. It should further consider imposing monetary sanctions against Welbilt for vexatiously multiplying these proceedings.

### ARGUMENT

Standing is a jurisdictional predicate to being heard in the federal courts. *See, e.g., In re Deist Forest Products, Inc.*, 850 F.2d 340, 341 (7th Cir. 1988). Federal courts are limited to deciding actual cases and controversies. Before a federal court may exercise its jurisdiction to hear a matter, the court must determine that its ruling will redress an actual injury suffered by the litigant who is properly before the court. *Id.*

These Article III limitations on standing apply with full force and are particularly meaningful in bankruptcy cases, where there are multiple parties not all of whom have the same pecuniary interests. *In re James Wilson Associates*, 965 F.2d 160, 168 (7th Cir. 1992). As this Court has held:

Simply being a party to a bankruptcy case is not enough to give one standing to participate in every aspect of the proceeding or to seek relief on every issue that might arise. *Matter of James Wilson Associates*, 965 F.2d 160, 168 (7th Cir. 1992); *In re Southwest Equipment Rental*, 152 B.R. 207, 209 (Bankr. E.D. Tenn 1992). To the contrary, “limits on standing are vital in bankruptcy, where clouds of persons indirectly affected by the acts and entitlements of others may buzz about, delaying final resolution of cases.” *Matter of Deist Forest Products, Inc.*, 850 F.2d 340, 341 (7th Cir. 1988). Strict rules, that narrowly define the scope of those who have standing to participate in the proceeding, promote the swift and efficient administration of the estate and avoid the needless multiplication of litigation. *Matter of Richman*, 104 F.3d 654, 656-57 (4th Cir. 1997). *See also In re Cult Awareness Network, Inc.*, 151 F.3d 605, 609 (7th Cir. 1998); *Matter of DuPage Boiler Works, Inc.*, 965 F.2d 296, 297 (7th Cir. 1992). Lax rules, on the other hand, which liberally allow anyone with some interest in the proceeding to object to a proposed course of action, tend to needlessly generate protracted litigation. *Richman*, 104 F.3d at 657.

*In re Drost*, 228 B.R. 208, 209 (Bankr. N.D. Ind. 1998).

Section 363(b)(1) of the Code and Rule 9019(a) provides that a court may approve a compromise or settlement upon notice to creditors and such other entities as the Court may direct. The Bankruptcy Code does not define a “party in interest”, however, it is generally understood to include all persons whose pecuniary interests are being directly affected by the matter before the court. *See In re Leavell*, 141 B.R. 393 (Bankr. S.D. IL 1992) *citing In re Kapp*, 611 F.2d 703 (8th Cir. 1979); *In re Transatlantic and Pacific Corp.*, 216 F. Supp. 546 (S.D.N.Y 1963); *In re Woodmar Realty Co.*, 241 F. 2d 768 (7th Cir. 1957); *In re Olsen*, 123 B.R. 312 (Bankr. N.D. Ill. 1991).

A party’s standing to be heard may vary depending on what the issue is before the court. *Drost*, 228 B.R. at 209. With respect to the claims allowance process of which a settlement motion is part, only those parties who will share in the “res” of the bankruptcy estate are parties in interest who are directly affected by whether a claim is allowed or not. *Adair v. Sherman*, 230 F.3d 890, 894 n.3 (7th Cir. 2000); *see also In re Woodmar Realty Co.*, 241 F.2d 768 (7th Cir. 1957) (debtor only allowed to object to claims if the estate is solvent or would be solvent if the claim objection was granted); *In re Combustion Eng'g, Inc.*, 292 B.R. 515 (Bankr. D. Del. 2003).

In this case, Welbilt is no longer a party that has any interest in the “res” of this estate because it no longer holds a claim against this estate. The District Court has found that Welbilt received in excess of \$8.6 million in transfers that are avoidable under 11 U.S.C. §§ 547 and 548. Welbilt has not returned these transfers. Under these circumstances, Section 502(d) of the Code requires the Court to disallow Welbilt’s proof of claim. 11 U.S.C. § 502(d) (“the court *shall* disallow any claim of any entity . . . that is a transferee of a transfer avoidable under section . . . 547, 548 . . . of this title, unless such entity or transferee has paid the amount . . . for which such entity or transferee is liable under section . . . 550 . . . of this title) (emphasis added); *Germain v. Conn.*

*Nat'l Bank*, 988 F.2d 1323, 1327 (2d Cir. 1993); *Max Sugarman Funeral Home, Inc. v. A.D.B. Investors*, 926 F.2d 1248 (1st Cir. 1991); *In re Marketing Associates of America, Inc.*, 122 B.R. 367, 368-69 (Bankr. E.D. Mo. 1991); *In re Bob Grisset Golf Shoppes, Inc.*, 50 B.R. 598, 607 (Bankr. E.D. Va. 1985). Indeed, as this Court has aptly stated, “as surely as night follows day” Welbilt’s claim will be disallowed once the Court enters an order with respect to Adversary No. 99-4022. *See In re Consolidated Indus. Corp.*, slip op. at 3 (Bankr. N.D. Ind. July 2, 2003).<sup>3</sup>

In an effort to manufacture standing, Welbilt asserts that it has an interest here because the Trustee has not negotiated a general release from the insurance carriers or the Vansants for Welbilt. *See* Welbilt Objection at ¶ 9. The Trustee, however, is under no legal obligation to obtain a release for Welbilt. Indeed, Welbilt’s objection is absolutely silent about any legal or equitable right Welbilt has to demand such a release from the Trustee or why the Trustee must provide such a release to settle other creditors’ claims against the estate. *Id.* If the law does not require the Trustee to obtain such a release for Welbilt, then Welbilt has no legally cognizable right to demand that such a release be given. Without such a right, it has no standing under these circumstances and its Objection should be dismissed.<sup>4</sup>

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<sup>3</sup>In paragraph 2 of its Objection, Welbilt appears to be contending that it has an administrative expense claim and that it is the assignee of a proof of claim filed by the Trane Company, a division of American Standard. Welbilt does not explain why this makes any difference to this Court’s conclusions about its standing under 11 U.S.C. § 502(d) and indeed neither fact, if true, would make any difference. But in any event, a quick review of the docket shows that this Court has never allowed Welbilt an administrative expense claim. Simply filing a proof of claim does not create administrative expense priority for a claim. *Compare* 11 U.S.C. § 502(a) *with* 11 U.S.C. § 503(a), (b); *In re Packard Properties, Ltd.*, 118 B.R. 61, 63 (Bankr. N.D. Tex. 1990); *In re Mansfield Tire & Rubber Co., Inc.*, 73 B.R. 735, 738 (Bankr. N.D. Ohio 1987). Absent an allowance order by this Court, Welbilt has no administrative expense claim in this case. Similarly, Welbilt has never filed notice of any assignment of the Trane claim as required by Rule 3001(e)(4), but even if it had, once the Trane claim is held in Welbilt’s name, it would be subject to disallowance under Section 502(d).

<sup>4</sup>Welbilt might think such a release is a good idea but any objection of that nature is eliminated here because Welbilt has no general creditor status upon which to base such an objection

Similarly, Welbilt's assertion that the settlement should be put on hold so it can cancel the underlying insurance policies is without any merit. Whatever rights Welbilt has *vis-à-vis* the third party insurance carriers does not create standing in this Court to participate in this case and ask the Court to order the Trustee to delay. If Welbilt is correct that the insurance carriers should not pay the Vansants and if the insurance carriers attempt to recover their payments to the Vansants from Welbilt, Welbilt will have a defense. Approving the instant settlement motion does not change whatever defenses Welbilt has *vis-à-vis* third parties and certainly does not create standing for Welbilt in this chapter 7 case.

The bottom line here is that Welbilt was happy with any Vansant settlement that created procedural defenses for it in Adversary No. 99-4022. Now that the Trustee has resolved the Vansant claims without creating those procedural defenses (a result which is in every legitimate creditors' best interests), Welbilt objects. The Court should ignore those objections and approve the settlement. It also should consider whether sanctions are appropriate in light of the fact that the Court has now told Welbilt on three occasions that it lacks standing and thus, Welbilt could not have had a good faith basis for asserting its Objection.

### **CONCLUSION**

For all of the foregoing reasons, the Trustee respectfully requests the Court strike Welbilt's Objection, enter an Order approving the Vansant settlement agreement, award the Trustee his costs

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and its views about what the estate and the Trustee ought to be doing to maximize settlement value cannot legally be considered.

including attorneys fees for having to once again raise the issue of a lack of standing and grant such other relief as may be just.

DANIELL. FREELAND, not individually but  
as Trustee for Consolidated Industries Corp.

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