

**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 OPPOSITION TO ENODIS CORPORATION’S  
MOTION TO ENLARGE ITS TIME TO FILE A BRIEF IN  
OPPOSITION TO THE TRUSTEE’S MOTION TO COMPROMISE  
THE CLAIMS OF SHERRIL AND BOBBY VANSANT  
UNTIL 14 DAYS AFTER A RULING BY THE UNITED STATES  
COURT OF APPEALS ON ENODIS’ APPEAL FROM THE  
DISMISSAL OF ITS ADVERSARY PROCEEDING SEEKING A  
MANDATORY INJUNCTION TO COMPEL THE TRUSTEE  
TO PRESENT A MORE FAVORABLE SETTLEMENT  
TO BANKRUPTCY COURT FOR APPROVAL**

Daniel L. Freeland, not individually but as Trustee for Consolidated Industries Corp. (the “Trustee”), respectfully submits his Opposition to the motion filed by Enodis Corporation f/k/a Welbilt Corporation (“Welbilt”) to defer ruling on the Trustee’s motion to approve a settlement with Sherill and Bobby Vansant (the “Vansants”), and states:

1. In February, 2003, Welbilt filed an injunction complaint asking that the Trustee be forced to settle with the Vansants, claiming that the insurance carriers were at great risk if the Trustee did not settle the Vansant litigation immediately. Now that the Trustee has done exactly what Welbilt claims to have wanted done, Welbilt again objects. This time it wants the Court to delay ruling on any settlement with the Vansants until the Seventh Circuit can decide whether this Court was correct in ruling that Welbilt was not entitled to an injunction directing the Trustee to settle with the Vansants.

2. The irony of Welbilt's conflicting positions illustrates the obvious. Welbilt's position with respect to the Vansant settlement has nothing to do with what is in the estate's best interests – the only standard that matters when this Court considers whether to approve a settlement – and everything to do with what it perceives to be in its selfish interests in connection with manufacturing defenses in Adversary Proceeding No. 99-4022. *See, e.g., In re Energy Cooperative, Inc.*, 886 F.2d 921, 927 (7th Cir. 1989) (“[t]he benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate”).

3. Last year, when Welbilt filed its injunction complaint, Welbilt believed that if the Trustee was forced to settle under the terms of a now-defunct agreement with the Vansants, the claims of the Vansants which date back to 1988, would no longer provide a basis for standing under 11 U.S.C. § 544(b) and the Trustee's \$30 plus million in fraudulent transfer claims would have to be dismissed. While the Trustee believes that this argument is utterly without merit (*see, e.g.* Trustee's Post-Trial Brief in Adv. Proc. No. 99-4022 at pgs. 74-76) and ignores the many other claims that provide standing, the best interests of the estate dictated that the Trustee not proceed with approval of the settlement. This Court agreed, refusing to enter an injunction directing the Trustee to settle and finding that the Trustee's withdrawal of the settlement was “an appropriate decision to make.” *See Welbilt Corp. v. Freeland*, Adv. No. 03-4004, 2/3/04 Tr. at 78-79.

4. Now that the Trustee has resolved the standing dilemma Welbilt created and reached a new agreement with the Vansants under which they will be allowed a very small claim against the estate in addition to an insurance payment, Welbilt objects. Despite its protests at the February injunction trial that it was concerned about the insurance carriers and their exposure, it now no longer cares about getting a settlement concluded. Instead it wants to delay matters further until the Seventh Circuit rules, which could be many months from now.

5. The Court should deny Welbilt's motion for several reasons. *First*, Welbilt has not stated any reason why delay is appropriate here. Its motion and brief both assert that the parties would be "best served by deferring consideration" of the Vansant settlement, but do not explain why this is so. *See* Welbilt's Brief at 2. Welbilt's complete failure to offer any reason for the requested delay is reason enough to deny the motion. *See* Fed. R. Bankr. Pro. 9013 (a "motion shall state with particularity the grounds therefor . . .").

6. *Second*, the Court should view this motion as what it really is -- a request to stay the effectiveness of this Court's rulings on the Section 502(d) issue until the matter is heard on appeal. A motion for a stay under Rule 8005 of the Federal Rules of Bankruptcy Procedure requires the movant to show: (1) that there is a likelihood of success on the merits on appeal; (2) that the appellant will suffer irreparable harm; (3) that a stay will not substantially harm other parties; and (4) that public policy favors a stay. *See, e.g., In re Forty-Eight Insulations, Inc.*, 115 F.3d 1294, 1300 (7th Cir. 1997); *In re Maurice*, 167 B.R. 136, 138 (Bankr. N.D. Ill. 1994). Here Welbilt has not attempted to make any showing in support of its stay request; it has not offered even a single reason why a stay is appropriate. Indeed, the likelihood is great that the Seventh Circuit will never reach the Section 502(d) issue and the delay will serve no purpose. Just as the District Court did, it is likely the Seventh Circuit will find that Welbilt's appeal on this issue is untimely. *See S.E.C. v. Suter*, 832 F.2d 988, 990 (7th Cir. 1987) ("The entry of a permanent injunction was a final decision. . . . The motions to vacate the injunction were efforts to create appellate jurisdiction over the injunction long after the deadline for an appeal had passed"). Welbilt should have appealed this Court's Section 502(d) ruling in July, 2003 when the ruling was made; not in February, 2004. Welbilt's Seventh Circuit appeal is just as likely to suffer the same fate as its District Court appeal.

7. Alternatively, the Seventh Circuit might chose to side-step this issue all

together and find that this Court properly exercised its discretion when it refused to order an injunction. Welbilt has conceded in its Seventh Circuit brief that the entry of a mandatory injunction is an extraordinary remedy and that review of the denial of such a request is judged under the “abuse of discretion” standard. Given that this Court expressly found that Welbilt had not proved any facts or argued any law that would support its extraordinary request, it seems highly unlikely that the Seventh Circuit would overturn this Court’s ruling. Even if the Seventh Circuit reaches the merits on the Section 502(d) issue, Welbilt has not offered a single reason why this Court’s ruling is likely to be overturned and, in fact, the ruling was correct. Indeed, the District Court’s affirmance of this Court’s ruling severely undercuts any ability of Welbilt to ever meet in this Court the standards necessary to obtain a stay.

8. The balancing of the harms and public policy also do not favor a stay. If the Court grants a stay here, Welbilt can effectively hold the Court and the Trustee hostage. Every time the Trustee seeks relief on any matter, all Welbilt need do is object and then everything will be put on hold. Neither the equities nor public policy favor placing this type of power in the hands of a party that is clearly adverse to the interests of every legitimate creditor of the Consolidated bankruptcy estate. This is particularly so here where Welbilt has not articulated a single legitimate reason for its stay request.

9. *Third*, delay to resolve the standing issue ultimately serves no purpose here as Welbilt’s objections to the settlement are not well-founded in any event. Welbilt now objects because it does not want the Vansants to be allowed a \$2000 claim against the estate. This settlement clearly is in the estate’s best interests in that it avoids the unfounded argument that Welbilt insists on making under Section 544(b) while simultaneously settling a carbon monoxide

poisoning case for a very reasonable amount. The worth of this settlement should be gauged by the fact that no creditor with a legitimate claim (and no ulterior motive) has objected.

10. The Court should treat Welbilt's Motion as the Response that this Court ordered to be filed. Welbilt's Motion is in the nature of a substantive response. Welbilt has not provided any basis (other than its unstated hope that the Seventh Circuit might see things its way) to justify its standing here. The Court should treat this Reply as the Reply it ordered the Trustee to file and rule on the Vansant settlement motion.

WHEREFORE the Trustee respectfully requests that the Court deny Welbilt's Motion and approve the Trustee's settlement motion and grant such other relief as may be just.

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

BY: /s/ Catherine Steege  
One of His Attorneys

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