

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

IN RE:)
)
CONSOLIDATED INDUSTRIES CORP.,) Bankruptcy No. 98-40533
)
Debtor.) CHAPTER 7 PROCEEDING
_____)

**ENODIS CORPORATION'S BRIEF IN OPPOSITION TO TRUSTEE'S MOTION
TO STRIKE ITS OBJECTION AND SUPPLEMENTAL OBJECTION
TO THE TRUSTEE'S MOTION TO COMPROMISE
VANSANT CONTROVERSY AND OTHER RELATED RELIEF**

Objector Enodis Corporation, ("Enodis") respectfully submits this brief in opposition to the Trustee's Motion to Strike its Objection to his Motion for Authority to Compromise Vansant Controversy and Other Related Relief.¹

Argument

The Trustee argues that this Court should rule that Enodis does not have standing to object to his proposed compromise with the Vansants for exactly the same reasons he contended that Enodis did not have standing to mandatorily enjoin him to seek this Court's approval of and then implement the "more favorable deal" with the Vansants that has been and still is still available. In Adversary Proceeding 03-4004, this Court agreed with the Trustee on the topic, among others, of standing.

This Court's ruling in Adversary Proceeding 03-4004 is presently before the United States Court of Appeals for the Seventh Circuit as Appeal No. 04-2322. In Enodis' Appellant's brief, the topic of standing is discussed at Points II, III, IV, V and XII. A copy of that brief is annexed hereto as Exhibit A and those Sections, together with the Statement of the

¹ Terms heretofore defined are respectfully used herein without further explanation.

Case and Statement of Facts are respectfully incorporated herein by reference.² For the reasons discussed therein, this Court should find that Enodis has standing to object to the Vansant Compromise.

In addition to those reasons, this Court should find that Enodis has standing to object based upon its July 28, 2004 Decision and Proposed Findings of Fact and Conclusions of Law entered in Adversary Proceeding 99-4022, which holds in pertinent part:

Defendants contend that an award of pre-judgment interest on the trustee's claims would result in a total judgment in excess of the value of the claims against the estate, therefore, such judgment would not be for the benefit of the estate. But this argument is wrong. ... The solution to that problem – assuming that it is a problem – is for the trustee to collect only so much of the resulting judgment as may be necessary to fully pay the costs of administration and all claims against the estate.

Id. at page 37.

In its Objection and Supplement to that Objection, Enodis has shown that there is a “better deal” available to the Estate. Every dollar that the Trustee “overpays” to settle claims is a dollar that potentially comes out of Enodis’ pocket. Enodis therefore has a direct financial interest in preventing the Trustee from overpaying claims (and thereby increasing the upper limit of his potential statutory fees). That direct financial interest gives Enodis standing to object to the Trustee not taking the “better deal” that is still available to him. *In re Cult Awareness Network, Inc.*, 151 F.3d 605, 607 (7th Cir. 1998).

² Enodis is mindful of this Court’s 25 page limit and incorporates herein only the sections of its Court of Appeals brief enumerated above, which total 19 pages. It attaches the entire brief only as a matter of courtesy to the Court.

Conclusion

For the foregoing reasons, this Court should deny the Trustee's motion and hear Enodis' Objection to the Proposed Vasant Compromise on its merits. Under no circumstances should this Court approve that settlement in the face of evidence that there is a "better deal" available to the Estate.

Dated: August 13, 2004

Respectfully submitted,

 /s/ J. Joseph Bainton
J. Joseph Bainton
John G. McCarthy
BAINTON MCCARTHY LLC
26 Broadway
New York, New York 10004
(212) 480-3500

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John R. Burns, III
Mark A. Werling
BAKER & DANIELS
111 East Wayne Street, Suite 800
Fort Wayne, Indiana 46802
(260) 424-8000

Attorneys for Enodis Corporation

Certificate of Service

I, J. Joseph Bainton, hereby certify that I caused a true and correct copy of the foregoing Objection to be served upon counsel for all parties who have appeared in this action via the Court's ECF system this 13th day of August 2004.

 /s/ J. Joseph Bainton .
J. Joseph Bainton