



efforts to force the Trustee to settle with the Vansants under the terms of the prior agreement (*see* Feb. 3, 2004 Tr. at 78)<sup>1</sup> The Trustee's position is even more valid today given the Court's subsequent entry of a \$43.3 million judgment against Welbilt. Thus, there is no "better" deal to implement.

2. More importantly, Welbilt's suggestion that avoiding a \$2,000 claim is a "better" deal ignores the focus of the analysis the Court must perform when determining whether to authorize a settlement. The relevant question is what is in the *estate's* best interests, not Welbilt's or any other individual creditor's interests. As the Seventh Circuit held in *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." Whether risking a \$43.3 million judgment to save on a \$2,000 claim is in the best interests of this estate (even if the risk is remote given the weakness of Welbilt's argument) is an easy question to answer -- one that the creditors who do not have an ulterior motive have answered by not objecting to the Trustee's proposed settlement which allows this \$2,000 claim. The Court should reject Welbilt's objections both because they lack merit and, as this Court has found repeatedly, Welbilt lacks standing to make them.

3. Welbilt continues to proclaim its standing in this case notwithstanding the fact that this Court has now disallowed its claim in a final order. Welbilt contends that notwithstanding this disallowance, it still has standing because it has an alleged stake in seeing that the claims against the estate are less than the \$52 million it owes to the Trustee. Given that the filed claims against this

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<sup>1</sup>Specifically, the Court stated: "Where VanSant is concerned, not only have I heard no evidence that leads me to believe that the Trustee has not appropriately exercised his judgment, but what I have heard leads me to believe that the Trustee had a good reason to pull the deal off the table, given what he saw Enodis' position being in 4022 with regard to the consequences of that litigation if the VanSant claim was settled and potentially pulling the Prometheus creditor claim out from under the ...Trustee as a basis to assert rights against Enodis." 2/3/04 Tr. at 78.

estate, excluding the expenses of the chapter 11 and chapter 7 cases, exceed \$300 million, any such interest is so theoretical as to be non-existent.

4. Moreover, this argument would turn Section 502(d) on its head. Welbilt has demonstrated its willingness to over-litigate every matter. To allow it to justify objections to the Trustee's conduct under the guise that it is trying to reduce its liability on account of the \$52 million it wrongfully took from Consolidated would enable Welbilt to object to virtually every action the Trustee has taken or will take to administer this estate in an orderly manner and thereby to allow Welbilt to delay the administration of this estate – and its own day of reckoning – almost indefinitely. This would render Section 502(d) a nullity. If Welbilt wants standing, the way to get there is easy – it should drop its appeal, pay the judgment and, if the claims against this estate are less than \$52 million, it can then demand a refund.<sup>2</sup>

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<sup>2</sup>Welbilt also incorrectly claims without ever explaining why it believes this to be true that the original Vansant settlement agreement provided for a release for Welbilt. This is untrue. *See* Exhibit A hereto. This defunct agreement does contain release language that releases the Debtor's parent, but Welbilt was not the Debtor's parent as of the date of that now-defunct agreement. As of the date of the now-defunct Vansant agreement, the Debtor had no parent, its sole shareholder was William Hall. Indeed, even prior to January, 1998, Welbilt Holding Company was the parent, not the objector here, which is Welbilt.

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

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

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