

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

IN THE MATTER OF:)
)
CONSOLIDATED INDUSTRIES CORP.) CASE NO. 98-40533
)
Debtor)

**DECISION AND ORDER ON JOINT MOTION FOR
TELEPHONIC STATUS CONFERENCE**

At Fort Wayne, Indiana, on May 19, 2005.

On April 29, 2005, the court issued a scheduling order with regard to the issues raised by the trustee's motion to compromise what was referred to as the KB litigation and Enodis Corporation's objections thereto. After setting out a time line for the litigation, the order directed counsel for the parties to participate in a conference to discuss the matter and the litigation schedule. It went on to provide that "if, as a result of this conference, a pre-trial conference or any change in the schedule for this litigation is considered appropriate, within 14 days of this date, counsel shall jointly file either a motion requesting a conference with the court or a scheduling stipulation." This 14 day deadline expired on May 13, without any type of joint filing from the parties. Then, on Monday, May 16, the parties jointly filed a motion for a telephonic status conference. Although neither of them seems to have a problem with the litigation schedule, they appear to have requested the conference because "Enodis believes that a telephonic pre-trial conference conducted on or after May 20, 2005, might assist the parties in preparing for trial and in discussing whether this matter can be submitted without trial based upon appropriate stipulations of fact."

In the first instance, the joint motion is late. If the parties thought a pre-trial conference or a change in the litigation schedule was appropriate, the scheduling order directed them to file such

a request within 14 days. They did not do so. The court is also skeptical that the parties will be able to submit the issues raised by the motion and objection without a trial. The court was previously told that counsel believed they would be able to submit certain preliminary issues presented by the litigation upon stipulations of fact and the briefs of counsel and, by the court's order of February 28, 2005, counsel were given a timetable within which to do so. The scheduling order of April 29, was issued only after the court was advised that they were not able to reach an agreement regarding those stipulations. Given that the parties were not able to submit a portion of this litigation upon an agreed statement of facts – after spending two months trying to do so – the court cannot see how they would be able to submit the entire matter in that fashion.

Much more important than the three-day delay in filing the joint motion or the court's skepticism concerning the parties' ability to submit this dispute based upon appropriate stipulations of fact, is the fact that the court's scheduling order already addresses that possibility. Its final paragraph reads: "Should the parties determine that this matter can be submitted without trial, they shall file appropriate stipulations of fact and a proposed briefing schedule on or before the date the pre-trial order is due." Order of April 29, 2005. Consequently, there is no need to hold any kind of conference to discuss the possibility of submitting the issues raised by the trustee's motion to compromise the KB litigation and Enodis Corporation's objections thereto upon stipulations of fact. If the parties discover that they are able to do so, the means for doing so are already in place. The joint motion is therefore DENIED.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court