

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In Re:)
Level Propane, Gases, Inc., et. al.) Case No. 02-16172
)
) Ch. 11
)
) Hon. Randolph Baxter
)

**EMERGENCY MOTION TO STRIKE BENESCH, FRIEDLANDER, COPLAN &
ARONOFF’S (BFCA) OPPOSITION TO MOTION TO DISQUALIFY BFCA AS
COUNSEL FOR THE ASSERTED DEBTORS-IN-POSSESSION
(Docket Item No. 3225)**

Now comes William H. Maloof, by and through counsel undersigned, and makes his Emergency Motion to strike Benesch, Friedlander, Coplan & Aronoff’s (BFCA) Opposition to his Motion to Disqualify them as Counsel for the asserted Debtors-in-Possession, Docket Item No. 3225, for the following reasons:

1.) The Opposition to the Motion to Disqualify BFCA would have this Court, an adjunct of the District Court, the jurisdiction of which is derived from the General Order of Referral of the District Court, pursuant to 28 U.S.C. Sec. 157(a), and to which appeals are taken, 28 U.S.C. Sec. 157(d), turn these statutory provisions on their head so that this Court is called upon to function as an appellate court with respect to the rulings of the District Court;

2.) The Opposition has presumed to speculate as to whether the District Court made an “inaccurate statement of the facts” or “a typographical error.” The statement of the District Court is clear: BFCA was an officer of the court representing the Bank Group. This statement has been of record since August 16, 2007 and BFCA has had ample opportunity and ample reason, since

the Movant has quoted this passage in several pleadings, to seek clarification from the District Court.

3.) The remedy of BFCA is clear: either to move the District Court to correct a clerical error under R. 60(a) F.R.C.P., if BFCA indeed can persuade the District Court, let alone itself, that this statement could be a “typographical error,” or to seek a relief from judgment under R. 60(b)(1), F.R.C.P., if it can persuade the District Court, let alone itself, that the passage is an inaccurate statement of the facts.

4.) BFCA has no place asking this Court to adjudicate any finding of the District Court. Were this Court to allow itself to be led into this trap, it would do so in breach of its sacred oath to the United States of America. The Opposition asks this Court that which is impossible for it to do: to sit in judgment on the words and ruling of a superior court. As such, the Opposition cannot have any possible relation to the Motion before the Court, since BFCA’s sole recourse is to the District Court with respect to the District Court’s statement that BFCA is an officer of the court representing the Bank Group. Consequently, the Opposition must be stricken from the record since it seeks a remedy that not only violates the law but corrodes the very foundation upon which our judicial system depends, *Brown & Williamson Tobacco Corp. v. United States* 201 F. 2d 819, 822 (6th Cir., 1953.) Sharp practice, no matter how confidently played, remains sharp practice. To ask the Court to sit in appellate judgment of its superior tribunal is simply outrageous and cannot be tolerated.

In conclusion, because this Opposition seeks to suck this Court into sitting in appellate judgment of an unchallenged ruling of a superior tribunal, it offends the very system of justice of both the District Court and this Bankruptcy Court is a part. In doing so, it is necessarily utterly

unresponsive to the matters before this Court, introduces argument that offends our system of justice and must therefore be stricken forthwith. The Court's failure to do so will be clear error.

Respectfully Submitted,

/s/David C. Eisler
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SERVICE

I hereby certify that on this 29th day of January, 2008, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/David C. Eisler
David C. Eisler, Counsel for the Movant