

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

In re:) Chapter 11
Level Propane Gases, Inc. et al.,)
Debtors) Case No. 02-16172
)
) Judge Randolph Baxter

**DEFENDANT MALOOF’S AMENDED OFFER OF EVIDENCE IN SUPPORT OF HIS
OBJECTION TO THE MOTION FOR ENTRY OF AN ORDER APPROVING THE
COMPROMISE OF CLAIMS AND TERMS OF SETTLEMENT AGREEMENT AND
RELATED RELEASES OF WALTER HIMMELMAN, WILLIAM H. MALOOF, AND
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURG, PA. (Docket Item
No. 3231)**

Now comes William H. Maloof, by and through counsel undersigned and for his amended offer of evidence in support of his Opposition to the Motion to the Court to Approve Settlement states as follows:

This matter has been set for hearing on February 26, 2008. Defendant Maloof has objected to the Motion for an Order Approving Settlement in part because of the manner in which the insurance policy funding the settlement was procured. In the course of his argument, he pointed to circumstances that rendered the insurance policy funding the settlement at least collusive and likely fraudulent. This Court is urged to take evidence concerning these circumstances.

This offer of evidence is made pursuant to the Court’s general equitable jurisdiction under 11 U.S.C. Sec. 105. To that end, Defendant Maloof outlines below, the evidence he is ready to present concerning the circumstances by which the insurance policy was extended beyond its term.

This offer of evidence bears on the circumstances surrounding the extension of the Directors & Officers Policy beyond the initial term so that it would cover the claims made on June 4, 2004. The original policy terminated by its own terms on July 31, 2002. Prior to that termination date, a one (1) year extension was purchased, affording coverage of claims made as to the events occurring within the original term. *The extension expired on July 31, 2003. The claims were made on June 4, 2004.* In support of his

Opposition to the Motion for Settlement, Defendant Maloof offers evidence that will establish that 1.) that only a one (1) year “run-off” extension, a “policy tail,” was purchased in 2002; 2.) that to purchase a second policy extension, a “tail on a tail,” was to purchase a policy on which a claim was certain to be made; 3.) as a consequence, such a purchase was such substandard insurance practice, in that it would certainly expose the insurer to liability under the policy, that it was the result of collusion between the insurer and the parties making the claim; and 4.) that such collusion was likely fraudulent.

Such a fraudulent policy, if the source of funding a settlement of which this Court approved, would indisputably be a fraud upon the court, a fraud with a dual purpose, to wrongfully procure funding of the settlement of a specious claim upon which no settlement could lawfully be had, and second, to further besmirch Defendant Maloof’s business reputation for the sole purpose of excluding him from the propane industry. This settlement, if approved by the Court, will only serve to continue the Bank Group’s campaign of character assassination of Defendant Maloof, which began with their scurrilous submissions in the first days of these Proceedings.

In furtherance of the above, Defendant offers the following evidence:

1.) The attached Exhibit 1, a copy of the initial coverage letter to Defendant Maloof from AIG Technical Services, dated July 14, 2004, describing the endorsement by which National Fire Insurance Co. of Pittsburgh, Pa. Policy No. 873-83-98 was extended as a two year endorsement dated 2001 and activated for one year from 2003;

2.) The attached Exhibit 2, a communication to Defendant Maloof from Peabody & Arnold, LLC, to which is attached the Endorsement 17 itself to National Fire Insurance Co. of Pittsburgh, Pa. Policy No. 873-83-98, which Endorsement bears the language “DRAFT COPY 6/14/2004,” despite the effective date of July 31, 2003 and the stated endorsement date of July 31, 2001;

3.) The evidence of Patrick Tighe, of AON Insurance, who, if called, will testify that he acted as broker for the original National Fire Insurance Co. of Pittsburgh, Pa. policy, obtained the first one-year tail, and learned only later that an unheard-of second tail was purchased at some point after, to his

knowledge, the first one-year tail had expired, and further that insurance documents for which he, Patrick Tighe, was responsible, were among those documents disposed of by Robert Angart in December, 2002;

4.) The evidence of Mark Schlachet, formerly of Benesch, Friedlander, Coplan & Aronoff, who, if called, will testify that the original policy extension was for one year and would expire in 2003, and that the extension was purchased at the insistence of the Bank Group.

Taken together, this evidence will establish that the insurance policy was collusively issued to fund what can only be called a collusive suit, the purpose of which was to further sully Defendant Maloof's business reputation before this Court as well as obtain, as of this writing \$1.5Million, which the Plaintiffs insist on settling despite Defendant Maloof's repeated objection and his readiness to take this suit to trial.

Respectfully Submitted,

/s/ David C. Eisler
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SERVICE

I hereby certify that on this 24th day of February, 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 William H. Maloof