

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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In re: :  
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TOBACCO ROAD ASSOCIATES, L.P., : Case No. 06-20470REF  
Debtor :  
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**SUPPLEMENTAL ORDER IN FURTHER SUPPORT OF MAY 16, 2006, ORDER  
DENYING APPLICATION TO APPOINT THE KORESKO LAW FIRM AS COUNSEL  
FOR DEBTOR-IN-POSSESSION**

AND NOW, this 31 day of May, 2006, upon my consideration of the Application of Debtor in Possession for Authority To Employ Attorneys, dated May 1, 2006, and filed May 2, 2006 (the "Application"), which Application, with its attached so-called Affidavit (the "Affidavit")<sup>1</sup> of John J. Koresko, V, Esquire ("Mr. Koresko"), sought the appointment of the Koresko Law Firm, P.C. ("Koresko"), as counsel for debtor, Tobacco Road Associates, LP ("TRA, LP")<sup>2</sup>, and which Application is signed by Mr. Gary T. Wilson<sup>3</sup> ("Mr. Wilson") possibly on behalf of Stinson Reliant

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1. The Affidavit is not sworn to a notary; it is a certification made under penalty of perjury.
  2. I note the interesting conundrum in this matter of two separate and distinct parties claiming that they have the power, control, and authority to operate and direct TRA, LP, each party, of course, retaining separate law firms to represent their interests. The parties initiating this proceeding, represented by Koresko, claim that they control TRA, LP. But a separate group of persons disagrees and claims that they control TRA, LP. The Hartman, Underhill attorneys represent this second group and, on April 26, 2006, they filed their Notice of Appearance and Request for Service of Papers on behalf of TRA, LP, pursuant to Fed. R. Bankr. P., Rules 2002 and 9007.  
As I explained fully in my bench order with findings of fact, discussion, and conclusions of law on May 9, 2006, in this matter, I believe that the interests represented by Hartman Underhill actually control TRA, LP, and that the interests represented by Koresko are poseurs.
  3. The Application refers to Mr. Wilson as "Gary T. Wilson," but the pending Lancaster County court litigation (referred to below) refers to Mr. Wilson as "Gary L. Wilson." I regard the difference as an immaterial error and consider the two as referring to one and the same person based upon the testimony and exhibits produced at the hearing on May 8, 2006.

Corp ("Stinson")<sup>4</sup>, upon my consideration of the record herein, including the transcript of the testimony and exhibits presented during the hearing and argument on May 8 and 9, 2006, upon my consideration of the transcript of counsel's comments in the hearing on the Application on May 15, 2006, in Court, and upon my consideration of my May 16, 2006 Order denying the Application, and it appearing that certain persons have appealed that Order (and other orders), I hereby file this Supplemental Order, pursuant to L.B.R. 8001-1(b), in further support of my May 16, 2006 Order denying the Application and I find and conclude the following:

1. Neither Mr. Wilson nor Stinson has provided any evidence sufficient to establish that either of them has authority to do anything on behalf of TRA, LP, and from the evidence presented during the hearing and argument on May 8 and 9, 2006, I find that they were not authorized to initiate this Chapter 11 proceeding or to represent TRA, LP, in any way. See May 9 Transcript, page 91, line 21, through page 92, line 3; page 98, line 14, through page 99, line 8.

2. Neither Mr. Wilson nor Stinson therefore has the authority to retain counsel for TRA, LP, and the Application seeking to retain Koresko as counsel is ineffective.

3. Paragraph 7 of the Application contains the statement by Mr. Wilson that neither Mr. Koresko nor Koresko has any connection with the creditors of TRA, LP, or any other party in interest.

4. Mr. Wilson's statement about Mr. Koresko and Koresko in Paragraph 7 of the Application is materially incorrect and false and Mr. Wilson made such incorrect and false

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4. The signature lines on documents submitted by Koresko throughout this proceeding fail to identify the relationships between and among the parties. The signature line for the Application is typical, appearing as:

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Gary T. Wilson  
Stinson Reliant Corp  
**Tobacco Road Associates, LP**

This signature gives no indication of the power, office, or authority of Mr. Wilson or Stinson to sign on behalf of TRA, LP. Is Mr. Wilson an officer of Stinson or a partner of TRA, LP? Is Stinson a partner in TRA, LP? Amazingly, Mr. Wilson's counsel for years and counsel in this matter, Mr. Koresko, testified in the May 8, 2006, hearing that he did not know what was meant by Mr. Wilson's signature as set forth above. May 8 Transcript, page 70, line 4, through page 71, line 11. Obviously the signature line should designate more clearly who is signing and in what capacity the person claims to be authorized to sign on behalf of TRA, LP.

statement in the Application despite his knowing the following:

A. Mr. Koresko and Koresko represent Mr. Wilson personally in certain pending state court litigation directly adverse to TRA, LP, in Lancaster County, Pennsylvania, in the matter captioned Gary L. Wilson<sup>5</sup> v. Tobacco Road Associates, LP, et al, Docket No. Cl-06-00748 (the “Lancaster County Litigation”). May 8 Transcript, page 53, line 22 through page 55, line 12.

B. Mr. Koresko and Koresko represent Mr. Wilson as a petitioning creditor allegedly owed certain sums of money in the Involuntary Bankruptcy Proceeding in this Court against TRA, LP, at Docket 06-20469 (Bkrcty. E.D. Pa.) (the “TRA Involuntary”). Docket 06-20469 document numbers 1, 3, and 4; May 8 Transcript, page 58, line 14, through page 59, line 15.

C. Mr. Koresko and Koresko represent Kit Gee (“Ms. Gee”) as a petitioning creditor allegedly owed certain sums of money in the TRA Involuntary. Docket 06-20469 document numbers 1, 3, and 4; May 8 Transcript, page 58, line 14, through page 59, line 15.

D. Mr. Koresko and Koresko represent Mr. Richard T. Wilson as a petitioning creditor allegedly owed certain sums of money in the TRA Involuntary. Docket 06-20469 document numbers 1, 3, and 4; May 8 Transcript, page 58, line 14, through page 59, line 15.

5. Paragraph 8 of the Application contains the statement by Mr. Wilson that neither Mr. Koresko nor Koresko represents any interest adverse to TRA, LP as DIP or to the estate.

6. Mr. Wilson’s statement about Mr. Koresko and Koresko in Paragraph 8 of the Application is materially incorrect and false and Mr. Wilson made such incorrect and false statement in the Application despite his knowing the following:

A. Mr. Koresko and Koresko represent Mr. Wilson personally in certain pending state court litigation directly adverse to TRA, LP, in the Lancaster County Litigation. See Paragraph 4.A., above.

B. Mr. Koresko and Koresko represent Mr. Wilson as a petitioning creditor allegedly owed certain sums of money in the TRA Involuntary. See Paragraph 4.B., above.

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5. See fn. 3, above.

C. Mr. Koresko and Koresko represent Ms. Gee as a petitioning creditor allegedly owed certain sums of money in the TRA Involuntary. See Paragraph 4.C., above.

D. Mr. Koresko and Koresko represent Mr. Richard T. Wilson as a petitioning creditor allegedly owed certain sums of money in the TRA Involuntary. See Paragraph 4.D., above.

7. In Paragraph 2 of the Affidavit, Mr. Koresko swore that neither he nor Koresko had any connection with TRA, LP, its creditors or any other party in interest therein.

8. Mr. Koresko's statement about himself and his law firm in Paragraph 2 of the Affidavit, made subject to the penalties for perjury, is materially incorrect and false<sup>6</sup> and Mr. Koresko made such incorrect and false sworn statement in the Affidavit despite his knowing the following:

A. Mr. Koresko and Koresko represent Mr. Wilson personally in certain pending state court litigation directly adverse to TRA, LP, in the Lancaster County Litigation. See Paragraph 4.A., above.

B. Mr. Koresko and Koresko represent Mr. Wilson as a petitioning creditor allegedly owed certain sums of money in the TRA Involuntary. See Paragraph 4.B., above.

C. Mr. Koresko and Koresko represent Ms. Gee as a petitioning creditor allegedly owed certain sums of money in the TRA Involuntary. See Paragraph 4.C., above.

D. Mr. Koresko and Koresko represent Mr. Richard T. Wilson as a petitioning creditor allegedly owed certain sums of money in the TRA Involuntary. See Paragraph 4.D., above.

9. In Paragraph 3 of the Affidavit, Mr. Koresko swore that neither he nor Koresko represented any interest adverse to TRA, LP, or its estate in the matters upon which they are to be engaged.

10. Mr. Koresko's statement about himself and his law firm in Paragraph 3 of the Affidavit, made subject to the penalties for perjury, is materially incorrect and false<sup>7</sup> and Mr.

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6. Mr. Koresko attempted to minimize the misrepresentation in the Affidavit, by noting that it is not "technically correct." May 8 Transcript, page 65, lines 12 - 13.

7. See fn. 6.

Koresko made such incorrect and false sworn statement in the Affidavit despite his knowing the following:

A. Mr. Koresko and Koresko represent Mr. Wilson personally in certain pending state court litigation directly adverse to TRA, LP, in the Lancaster County Litigation. See Paragraph 4.A., above.

B. Mr. Koresko and Koresko represent Mr. Wilson as a petitioning creditor allegedly owed certain sums of money in the TRA Involuntary. See Paragraph 4.B., above.

C. Mr. Koresko and Koresko represent Ms. Gee as a petitioning creditor allegedly owed certain sums of money in the TRA Involuntary. See Paragraph 4.C., above.

D. Mr. Koresko and Koresko represent Mr. Richard T. Wilson as a petitioning creditor allegedly owed certain sums of money in the TRA Involuntary. See Paragraph 4.D., above.

11. Mr. Koresko defends his materially incorrect and false sworn statements in the Affidavit by saying that he directed Jeanne D. Bonney, Esquire (“Ms. Bonney”), the other attorney in the Koresko law firm, to prepare a boiler-plate application for the appointment of counsel with its supporting boiler-plate affidavit, that he did not read either the Application or the Affidavit, and that he authorized Ms. Bonney to sign his name on the Affidavit nonetheless. May 8 Transcript, page 58, lines 3 - 13, page; page 64, lines 8-11; page 69, line 10, through page 70, line 3; and May 15 Transcript, page 3, lines 1 - 6.<sup>8</sup>

12. Mr. Koresko admitted and acknowledged in his testimony to this Court that his representation of the creditors and interests described above may be a conflict under Pennsylvania Rules of Professional Conduct (“PaRPC”), Rule 1.7, but he believes that Mr. Wilson

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8. Holding aside Mr. Koresko’s cavalier attitude toward the sworn contents of the Affidavit as boilerplate, I note that Ms. Bonney is every bit as involved in the Lancaster County Litigation and the TRA Involuntary as is Mr. Koresko, and therefore must be aware of the incorrect and false nature of the sworn statements in the Affidavit.

waived the conflicts both personally and on behalf of TRA, LP.<sup>9</sup> May 8 Transcript, page 64, line 24, through page 65, line 5. On the other hand, it also appeared that Mr. Koresko seems to have misunderstood the conflict because he referred to counsel's ability to represent a corporation in bankruptcy when counsel had or continues to represent a controlling person of the debtor. May 8 Transcript, page 65, line 14, through page 66, line 5. In any event, he has said nothing about any waiver of his conflicts arising from his representation of Ms. Gee or Mr. Richard T. Wilson.

13. Mr. Koresko was single-handedly responsible for Susquehanna Bank ceasing its consideration of financing the TRA, LP real estate development when he sent to Mr. James Muir at Susquehanna Bank a copy of a lis pendens that Koresko had filed against TRA, LP in February 2006. May 8 Transcript, page 218, lines 9 - 13; and Tab 3 of TRA Exhibit "1."

14. Clearly representing parties on opposite sides of an adversary proceeding, Koresko filed an answer, in the TRA Involuntary, on behalf of TRA, LP, which answer purports to consent to the entry of an order for relief against TRA, LP.

15. Mr. Koresko's direct representation of both sides in the involuntary

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9. Mr. Koresko pointed to no particular waiver, whether oral or written. He concluded that Mr. Wilson must have waived the conflict, based upon his having approved the filing of all documents in these cases. May 8, Transcript, page 64, line 24, through page 65, line 5. I have serious reservation, however, whether Mr. Wilson's waiver was truly an informed consent. Rule 1.1(e) of the Pennsylvania Rules of Professional Conduct defines "informed consent" as "the consent by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."

Comment 18 to Rule 1.7 provides (omitting some referring citations):

Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved.

proceeding is an unwaivable conflict of interest under Rule 1.7(b)(3) of the PaRPC.<sup>10</sup>

16. By representing both parties to an adversarial dispute in court, Mr. Koresko and Koresko have violated the fiduciary and professional duties owed to their clients.

17. Even if the parties could somehow waive the conflicts under Rule 1.7 of the PaRPC, neither Mr. Koresko nor Koresko satisfy the requirement that they be disinterested under Section 327(a) of the Bankruptcy Code. 11 U.S.C. Section 327(a).<sup>11</sup>

18. The Application is not moot because the debtor faces the possibility of defending against a request for sanctions by the true TRA, LP, and because Mr. Wilson has decided to appeal<sup>12</sup> from my May 9, 2006, bench and written orders, which events require the efforts and attention of counsel. May 8 Transcript, page 103, line 13, through page 104, line 24; May 15 Transcript, page 2, lines 20 - 25.

19. The Application was signed by Mr. Wilson, who is therefore the only person who may withdraw it; because he did not do so, the Application has not been withdrawn.

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10. Rule 1.7(b)(3) provides:

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal . . .

Comment 17 to Rule 1.7, provides (omitting some text):

(17) Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding.

11. Further evidence of the lack of disinterestedness of Mr. Koresko and Koresko is their filing, on their own behalf, of their notice of appeal of every order I entered in this proceeding, including those orders entered at their request.

12. Mr. Wilson and Stinson have filed their appeals as purportedly interested parties. Debtor has filed no appeal, presumably because Koresko does not desire to have disinterested counsel represent debtor in an appeal.

I also note that the appeal of Stinson cannot be advanced because no attorney represents it in the appeal. Without counsel, a corporation cannot proceed with an action in Bankruptcy Court. See In re Thomas J. Turner III Law Offices, P.C., 1993 WL 437416, \*1 (Bkrcty. E.D. Pa. Feb.24, 1993) and the cases cited therein. But this is an issue for the determination of the District Court on appeal.

May 15 Transcript, page 2, lines 22 - 23 and page 8, lines 11 - 16.

20. Although the Koresko attorneys hold themselves out as experienced bankruptcy counsel in Paragraph 5 of the Application, I question their competency and ability to handle the most basic requirements for representing a viable Chapter 11 debtor-in-possession. On numerous occasions, Koresko evinced total unfamiliarity with the rules for filing motions and having matters scheduled for hearing on the Court's calendar.

A. The ability to use cash collateral during the pendency of a Chapter 11 proceeding is essential to a debtor's reorganization efforts. Koresko filed, well after the start of the case, a motion for leave to use cash collateral.

B. In their effort to remain in the case as counsel, Koresko has contrived to represent some party other than debtor in the appeals of my orders and filed a broad-ranging motion to have Stinson identified as an interested, intervening party (the "Stinson Intervention Order").<sup>13</sup>

C. I provided instructions for Koresko to allow them to proceed with the two motions in Paragraphs 20.A. and 20.B., above, which motions would otherwise have sat dormant indefinitely (or would have been dismissed for improper filing). May 8 Transcript, page 45, line 20, through page 46, line 23; May 15 Transcript, page 3, line 10, through page 5, line 22.

D. In a confusing<sup>14</sup> series of seven or so motions filed on May 18 and 19, 2006, Koresko omitted from all seven motions any reference whatsoever to the name of the movants. They filed the seven motions on behalf of nobody.

E. On May 19, 2006, I dismissed the seven motions in Paragraph 20.D., above, without prejudice, to allow Koresko to re-file revised motions that identify the movants.

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13. I denied the intervention motion without prejudice to allow Stinson to seek to intervene on a case-by-case basis because in any given motion, intervention by Stinson may or may not be appropriate. For example, in the appeal from various orders I made, the intervention and standing of Stinson will be determined by the District Court.

14. The motions filed contained dual captions, for both this matter and the TRA Involuntary, but were not all filed in the TRA Involuntary case; the motions differed from the docket descriptions used by Koresko to file them; and the motions were filed in this case on May 18, 2006, and in the TRA Involuntary on May 19, 2006.



F. I had also considered Koresko's wholly incorrect inter-office memorandum seeking expedited relief on April 27, 2006, which inter-office memorandum had been faxed to my office without being filed with the Clerk's office; although I denied the "motion" I could have simply ignored it, leaving it in stasis, which might otherwise have occurred from Koresko's failure to follow the rules for filing such a request.

G. At the May 19, 2006, hearing on the Stinson Intervention Motion, which was requested by Koresko on an expedited basis, Leon Winitsky appeared with counsel pursuant to a subpoena directing him to appear and bring a substantial volume of documents. Mr. Koresko objected to the subpoena directing Mr. Winitsky to appear because he had received no notice of the subpoena. Counsel for Mr. Winitsky remarked with some wonder about that objection because the subpoena to Mr. Winitsky was signed by Mr. Koresko. Mr. Koresko then realized that the subpoena had been served by his office. See May 19 Transcript, page 3, line 13, through page 5, line 1.

H. I have previously referred to the confusion caused by Koresko's repeated inconsistency in using docket entries that do not match the names of their filed documents.<sup>15</sup>

THEREFORE, IT IS HEREBY ORDERED that this Supplemental Order in Further Support of May 16, 2006, Order Denying Application To Appoint the Koresko Law Firm as Counsel for Debtor-in-Possession is filed pursuant to L.B.R. 8001-1(b) and amplifies my Order dated May 16, 2006, dealing with the same subject matter;

IT IS FURTHER ORDERED that, because of Koresko's unabated and continuing conflicts, Koresko's breached fiduciary duties to their clients (in particular, TRA, LP), and Koresko's lack of disinterestedness under Section 327 of the Bankruptcy Code, the Application is hereby DENIED;

IT IS FURTHER ORDERED that, because of Koresko's unabated and continuing conflicts, Koresko's breach of their fiduciary duties to their clients (in particular, TRA, LP), Koresko's lack of disinterestedness under Section 327 of the Bankruptcy Code, and Koresko's utter

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15. Memorandum Opinion, dated May 30, 2006, in Support of Bench and Written Orders Dated May 9, 2006, Denying Request To Rescind or Extend the Hearing Date of May 8, 2006, fn. 3.

absence of concern about the so-called "technical" conflicts, that Mr. Koresko, Koresko, and Koresko's attorneys shall not be permitted to continue their representation of TRA, LP, even if they were to do so without being paid and they are hereafter barred and prohibited from representing TRA, LP, in any matter whatsoever before this Court without further order and permission of this Court.<sup>16</sup>

BY THE COURT



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RICHARD E. FEHLING  
United States Bankruptcy Judge

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16. Approval of Koresko as counsel for TRA, LP, is required even if they are not to be compensated from estate funds. Ferrara & Hantman v. Alvarez (In re Engel), 124 F.3d 567, 571 (3d Cir. 1997). Approval of counsel for the estate is required so that the Court may review counsel's competency, experience and integrity. In re Arkansas Company, Inc., 798 F.2d 645, 648 (3d Cir. 1986).