

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
Met-Coil Systems Corporation,)	
)	Case No. 03-12676 ()
Debtor.)	

**DEBTOR'S MOTION FOR ENTRY OF ORDER AUTHORIZING
(A) CONTINUED USE OF (I) BUSINESS FORMS AND (II) CASH MANAGEMENT
SYSTEM AND (B) WAIVER OF INVESTMENT GUIDELINES**

Met-Coil Systems Corporation (the "**Debtor**" or "**Met-Coil**"), debtor and debtor-in-possession in the above-captioned Chapter 11 case (the "**Case**"), hereby presents this motion for entry of Order authorizing (A) continued use of (i) business forms and (ii) cash management system and (B) waiver of investment guidelines (the "**Cash Management Motion**"). In support hereof, the Debtor relies upon the Affidavit of Charles F. Kuoni III in Support of First Day Motions of Met-Coil Systems Corporation (the "**Kuoni Affidavit**"), filed contemporaneously herewith and incorporated herein by reference, and respectfully represents as follows:

JURISDICTION

1. This Court has jurisdiction over the Cash Management Motion pursuant to 28 U.S.C. §§ 157 and 1334.

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. Consideration of the Cash Management Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

3. The statutory predicates for the relief requested herein are §§ 105(a) and 345 of title 11 of the United States Code (the "**Bankruptcy Code**") and Local Bankruptcy Rule for the District of Delaware 1007-2(b).

INTRODUCTION

4. On August 26, 2003 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. The Debtor is operating its business as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed.

RELIEF REQUESTED

6. By this Cash Management Motion, the Debtor seeks an order authorizing (A) continued use of its (i) business forms and (ii) cash management system, and (B) a waiver of investment guidelines.

BASIS FOR RELIEF REQUESTED

Bank Accounts

7. The United States Trustee for the District of Delaware has established operating guidelines for debtors in possession that operate their businesses. Under these guidelines, debtors in possession must do the following at the commencement of a Chapter 11 case:

- (a) replace all existing bank accounts with debtor-in-possession accounts;
- (b) create a single debtor-in-possession account out of which to pay all taxes;
- (c) create a single debtor-in-possession account for maintaining cash collateral; and

- (d) replace all old checks with new ones drawn on the debtor-in-possession accounts and bearing the designation "debtor-in-possession," the bankruptcy case number, and the type of account upon which such checks are drawn.

These requirements serve two purposes: they provide a simple way to distinguish between prepetition and postpetition transactions, and they help prevent the inadvertent postpetition payment of prepetition claims by preventing the banks from honoring checks drawn before the Petition Date.

8. Before the Petition Date, the Debtor, in the ordinary course of business, maintained a local petty cash-checking account at LaSalle Bank in Lisle, Illinois (Account No. 52009875590), a local petty cash-checking account at Firststar in Cedar Rapids, Iowa (Account No. 12337802) and an account at MB Financial Bank, N.A. ("**MB Financial**") in Chicago, Illinois (Account No. 1560000317).

9. The Debtor has arranged for a bank account to be opened at Fleet Bank which will serve as the Debtor's postpetition bank account, from which all expenses shall be paid. The Debtor seeks a waiver of the requirement that it open a separate bank account for payment of taxes because it will be administratively more feasible to utilize one bank account, particularly given the Debtor's cash management system.

Business Forms

10. To minimize expense to its estate, the Debtor also requests authority to continue to use all stationery, correspondence and business forms (including, but not limited to, purchase orders, multi-copy checks, letterhead, envelopes, promotional materials and other business forms), as well as checks existing immediately before the Petition Date, without reference to its status as a debtor-in-possession. The Debtor requests authority to

purchase new business forms and checks during the pendency of this Case, without any legend reflecting the Debtor's status as a debtor-in-possession.

11. The Debtor, in the ordinary course of its business, uses various pre-printed business forms. A substantial amount of time and expense would be required in order to print new business forms and many of the parties with whom the Debtor deals could be confused by a change in the Debtor's forms. Furthermore, parties doing business with the Debtor will be aware of the Debtor's status as a chapter 11 debtor-in-possession. Accordingly, changing such forms would be unnecessary and burdensome to the estate, as well as expensive and disruptive to the Debtor's business operations. The Debtor therefore respectfully requests that it be authorized to continue to use its existing business forms.

12. Courts have allowed debtors to use their pre-petition forms without the "debtor-in-possession" label. See, e.g., In re Gold-Standard Baking, Inc., 179 B.R. 98, 105-06 (Bankr. N.D. Ill. 1995) (holding United States Trustee's requirement prohibiting issuance of checks without "debtor-in-possession" designation to be unenforceable).

Cash Management System

13. Under the cash management system, cash management for the Debtor's divisions is coordinated on a daily basis. Cash receipts are either sent directly to a bank lockbox account at Fleet Bank or are received at the offices of the Debtor's respective divisions. The lockbox provides centralized clearing of the checks. Available funds are automatically transferred to the Debtor's Fleet Bank bank account from the lockbox account on a daily basis (non-banking days excluded). Checks received at division offices are sent via overnight carrier to the lockbox. The Debtor maintains accounts receivable detail

information in computer readable format. The Debtor has requested that Mestek, Inc., its indirect parent ("Mestek"), maintain the records on its mainframe system.

14. Disbursements are made from the Debtor's Fleet Bank bank account. The checks are printed and mailed by Mestek. All disbursements must be approved by the Debtor's president or with limited authority, the general managers of the Debtor's divisions.

15. The Debtor seeks authority to continue utilizing its current cash management system between and among its divisions. In the event the Debtor's operations result in a cash surplus, the Debtor intends to retain and use that cash in its continued operations or invest such funds in accordance with § 345 of the Bankruptcy Code, as modified by this Motion.

16. A successful reorganization of the Debtor's business, as well as the preservation and enhancement of the Debtor's value as going concern, simply cannot be accomplished if there is substantial disruption in Debtor's Cash Management System. Therefore, it is essential that the Debtor be permitted to continue to consolidate the management of cash and transfer monies between and among its divisions. The Debtor currently maintains and will continue to maintain detailed accounting records of the Cash Management System.

17. The basic transactions incident to the Cash Management System described above constitute customary and essential business practices. The Debtor's Cash Management System is similar to those commonly employed by corporate enterprises comparable to the Debtor in size and complexity. The widespread use of such systems, moreover, is attributable to the numerous benefits they provide, including the ability to (a) control corporate funds, (b) invest idle cash, (c) ensure cash availability and (d) reduce

administrative expenses by facilitating the movement of funds and the development of timely and accurate account information.

18. Bankruptcy courts routinely grant chapter 11 debtors authority to continue utilizing existing cash management systems, treating request for such authority as a relatively "simple matter." In re Baldwin-United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). In Charter Co. v. Prudential Ins. Co. of America (In re Charter Co.), 778 F.2d 617 (11th Cir. 1985), for example, the bankruptcy court had entered an order authorizing the debtor and 43 of its subsidiaries "to continue to consolidate the management of their cash as has been usual and customary in the past, and to transfer monies from affiliated entity to entity, including operating entities that are not debtors." Id. at 618. Subsequently, the district court denied a creditor's motion for leave to appeal the bankruptcy court's cash management order. The United States Court of Appeals for the Eleventh Circuit affirmed the district court's ruling and held that authorizing the debtors to utilize their prepetition "routine cash management system" was "entirely consistent" with applicable provisions of the Bankruptcy Code. Id. at 621.

19. Likewise, in another context, the bankruptcy court in the Columbia Gas chapter 11 cases explained that a centralized cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." In re Columbia Gas Sys., Inc., 136 B.R. 930, 934 (Bankr. D. Del.) (examining the validity of certain customer refund claims of funds maintained in debtors' cash management system), aff'd in part and rev'd in part, 1992 U.S. Dist. LEXIS 9460 (D. Del. 1992), aff'd in part and rev'd in part, 997 F.2d 1039 (3d Cir. 1993). The Third Circuit agreed, emphasizing that a requirement to maintain all

accounts separately "would be a huge administrative burden and economically inefficient." Columbia Gas, 997 F.2d at 1061;¹ see also In re Polaroid Corp., Case No. 01-10864 (PJW) (Bankr. D. Del. 2001); In re Diamond Brands Operating Corp., Case No. 01-1825 (RJN) (Bankr. D. Del. 2001).

20. It is critical both to the continued operation of the Debtor's business and to the preservation of the value of that business that the Debtor's existing financial systems and, in particular, its centralized Cash Management System, continue to be utilized without substantial disruption.

Waiver of Section 345 Requirements

21. Section 345 of the Bankruptcy Code governs a debtor's deposits and investments of cash during a chapter 11 case, and authorizes deposits or investments of money "such as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. § 345(a). For deposits or investments that are not "insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States," § 345(b) requires that the estate secure from the entity with which the money is deposited or invested, a bond in favor of the United States secured by the undertaking of

¹ Because orders approving the continued use of preexisting cash management systems are generally entered at the time of or shortly after the commencement of a bankruptcy case, and because the benefits to affiliated companies of such systems are widely recognized, few requests for the entry of such orders are ever contested. Indeed, references to court orders authorizing the continued use of centralized cash management systems generally are found in opinions regarding collateral proceedings, rather than in reported decisions approving or disapproving the use of a particular system. See, e.g., In re HSSI, Inc., 176 B.R. 809, 811 (Bankr. N.D. Ill. 1995) (United States trustee motion for payment of statutory fees; refers to previously approved centralized cash management system), rev'd on other grounds, 193 B.R. 851 (N.D. Ill. 1996); In re FRG Inc., 107 B.R. 461, 465 (Bankr. S.D.N.Y. 1989) (order on motion to transfer venue referring to "Application for Order Authorizing Debtors to Continue Pre-Petition Cash Management System"); In re Family Health Servs., Inc., 104 B.R. 279, 281 (Bankr. C.D. Cal. 1989) (order on motion to dismiss; refers to debtors' consolidated "cash management system"), rev'd on other grounds and remanded, 143 B.R. 232 (C.D. Cal. 1992).

an adequate corporate surety, unless the Court orders otherwise. In the alternative, the estate may require that the entity deposit governmental securities pursuant to 31 U.S.C. § 9303.² 11 U.S.C. § 345(b).

22. Among the assets of the Debtor's chapter 11 estate is cash and cash equivalents (the "**Funds**") generated by the daily operation of its businesses. Through the Debtor's existing Cash Management System, substantially all of the Debtor's Funds are maintained at minimum or zero-balance accounts. Funds deposited in those accounts are applied to reduce the outstanding balance of the Debtor's revolving loan. The Debtor then re-borrows funds under the revolving loans to fund operations and other business expenses.

23. All of the Debtor's bank accounts are in financially stable banking institutions insured by the Federal Deposit Insurance Corporation, or are managed by reputable investment management firms.

24. This Court has frequently waived the strict requirements of § 345(b) and the U.S. Trustee Guidelines in order to permit chapter 11 debtors, like the Debtor, to continue to invest excess cash in commercially reasonable short-term investments. See, e.g., In re FFC Holding, Inc., Case No. 01-2399 (Bankr. D. Del. July 18, 2001); In re USG Corp., Case No. 01-2094 (Bankr. D. Del. June 27, 2001); In re W.R. Grace & Co., Case No. 01-011399 (Bankr. D. Del. April 2, 2001); In re Diamond Brands Operating Corp., Case No. 01-1825 (RJN) (Bankr. D. Del. May 30, 2001); In re ICG Communications, Inc., Case No. 00-4238 (SLR) (Bankr. D. Del. Nov. 16, 2000); In re Stone and Webster, Incorporated, Case No. 00-2142 (RRM) (Bankr. D. Del. June 5, 2000); In re Eagle Food Centers, Inc., Case No.

² 31 U.S.C. § 9303 provides that where a person is required by law to give a surety bond, that person, in lieu of such surety bond, may provide a governmental obligation.

00-01311 (Bankr. D. Del. Mar. 1, 2000). The Debtor submits that cause for a similar waiver exists in this chapter 11 case.³

NOTICE AND PRIOR APPLICATION

25. Notice of this Cash Management Motion has been given to (a) the Office of the United States Trustee for the District of Delaware; (b) counsel for the Debtor's prepetition and postpetition secured lenders; (c) the Debtor's twenty (20) largest unsecured creditors; (d) the United States Environmental Protection Agency; (e) the Attorney General of the State of Illinois; (f) the DuPage County State's Attorney; (g) counsel to the plaintiffs in the environmental litigation matters pending before the United States District Court for the Northern District of Illinois and the Circuit Court for the Eighteenth Judicial District, DuPage County (collectively, the "Core Group"); and (h) all banks at which accounts are maintained. As this Cash Management Motion is seeking "first day" relief, notice of this Motion and any order entered respecting this Cash Management Motion will be served as required by Del. Bankr. LR 9013-2(d). The Debtor submits that the notice provided is appropriate under the circumstances and that no other or further notice need be given.

26. No previous motion for the relief sought herein has been made to this or any other court.

CONCLUSION


WHEREFORE, the Debtor respectfully requests entry of an order substantially in the form attached hereto: (A) authorizing continued use of (i) business forms,

³ Pursuant to Del.Bankr.LR 1007-2(b), such a waiver may only be granted on an interim basis, where parties in interests have not had the benefit of notice and an opportunity for a hearing, where such relief is sought by a debtor with more than 200 creditors on the first day of the chapter 11 case. As the Debtor has in excess of 200 creditors, the Debtor seeks relief on an interim basis only until such notice has been provided and there has been opportunity for a hearing.

and (ii) Cash Management System; (B) waiving investment and deposit requirements; and (C) granting such other and further relief as the Court deems just and proper.

Dated: August 26, 2003

MORRIS, NICHOLS, ARSHT & TUNNELL

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