

**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 (A) AUTHORIZING (I) PAYMENT OF EMPLOYEE WAGES, SALARIES, COMMISSIONS, BONUSES AND ACCRUED PREPETITION BENEFITS, (II) CONTRIBUTIONS TO EMPLOYEE BENEFIT PLANS, (III) PAYMENT OF FUNDS DEDUCTED FROM PAYROLL, AND (IV) REIMBURSEMENT OF EMPLOYEE EXPENSES, AND (B) DIRECTING ALL BANKS TO HONOR RELATED CHECKS

Met-Coil Systems Corporation, debtor and debtor in possession (the "**Debtor**" or "**Met-Coil**") in the above-captioned Chapter 11 case (the "**Case**"), hereby presents this motion (the "**Motion**") for entry of an Order pursuant to §§ 363(b), 507(a)(4), 507(b)(4), and 105(a) of title 11 of the Bankruptcy Code (the "**Bankruptcy Code**"): (a) authorizing (i) payment of employee wages, salaries, commissions, bonuses and accrued prepetition benefits ("**Prepetition Compensation, Deductions and Benefits**") in accordance with the policies and practices established by the Debtor prior to the commencement of the Case, (ii) the continuation of the Debtor's employee benefit programs postpetition; (iii) contributions to employee benefit plans ("**Employee Benefit Plans**"), (iv) payment of funds deducted from payroll, and (v) reimbursement of employee prepetition business expenses ("**Prepetition Expenses**"), and (b) authorizing and directing all banks to honor related checks for payment of prepetition employee claims. In support of the Motion, the Debtor refers to and 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 AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are §§ 105(a), 363(b) and 507(a)(3) and (a)(4) of title 11 of the United States Code (the "**Bankruptcy Code**").

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.

DEBTOR'S WORKFORCE

6. As of the Petition Date, Met-Coil employed approximately 224 employees, of whom approximately 218 are full-time and 6 are part-time. Approximately 147 of the employees are hourly wage earners and 77 are salaried employees. The next payroll date for the hourly wage earners is August 29, 2003.

7. The average monthly payroll for Met-Coil's employees is \$1,275,000.00 including payroll taxes. Salaried employees are generally paid on a bi-weekly basis, and hourly employees are generally paid on a weekly basis.

8. The only employee entitled to a commission is one salaried employee at The Lockformer Company, a division of the Debtor ("Lockformer"), who receives, as an

incentive for the sale of Service Plans and Software Upgrades, the following commission based upon the sales of the plans:

Silver Service Plans

1-25 \$0.00
Over 26 \$30.00 per plan

Gold Service Plans

1-5 \$0.00
Over 5 \$60.00 per plan

Software Upgrades

Complete VSII Upgrade \$300.00/per upgrade sold
VSII Upgrade \$2% or \$250.00 per upgrade sold

The foregoing commission is paid quarterly through payroll.

9. The Debtor estimates that a minimal percentage of the Debtor's employees are owed more than \$4,650.00 for prepetition wages, salaries or commissions.

10. The Debtor offers its employees other forms of compensation through employee benefit programs, described as follows:

(a) Vacation Pay: The Debtor has the following vacation pay policies:

(i) Iowa Precision¹ Non-Union (Salary and Hourly):

1 week after 1 year
2 weeks after 2 years
3 weeks after 8 years
4 weeks after 15 years

(ii) Iowa Precision Union:

1 week after 1 year
2 weeks after 2 years
3 weeks after 7 years
4 weeks after 14 years
5 weeks - beginning of 25th year
1 additional day for each year over 30 years

¹

Iowa Precision Industries, Inc. is a division of the Debtor ("Iowa Precision" or "IPI").

(iii) Lockformer Union:

1 year but less than 2 years	5 days
2 years but less than 6 years	10 days
6 years but less than 16 years	15 days
16 years but less than 17 years	16 days
17 years but less than 18 years	17 days
18 years but less than 19 years	18 days
19 years but less than 20 years	19 days
20 years but less than 25 years	20 days
25 years but less than 30 years	25 days
30 years or more	25 + one day for each year over 30

(iv) Lockformer Non-Union: The amount of vacation earned by an employee is based upon the number of complete years of service with the Debtor. The service year is calculated from the anniversary date, not the calendar year. The amount of vacation due is determined by the following schedule:

<u>As of Anniversary Date</u>	<u>Amount of Vacation Due</u>
1 through 7 years of service	2 weeks (10 paid days) vacation after the 1 st service year and each service year thereafter through the 7th year.
8 through 19 years of service	3 weeks (15 paid days) vacation beginning with the 8th year of service and each service year thereafter through the 19th year.
20 through 24 years of service	4 weeks (20 paid days) vacation beginning with the 20th service year and each service year thereafter through the 24th year
25 years or more of service	5 weeks (25 paid days) vacation beginning with the 25th service year and each service year thereafter.

Unless other arrangements are made in advance, each employee is expected to take vacation between January 1st and December 31st in any given year; vacation time may not be accumulated from one year to the next.

(b) Overtime. The Debtor has the following overtime policy:

(i) Union: 1.5x over 8 hours per day, 1.5x for all hours on Saturday, 2x for all hours on Sunday

(ii) Non-Union (Non-exempt): 1.5x over 40 hours per week including Saturday, 2x on Sunday (never happens)

(iii) Holidays: 12 per year at IPI and 11 per year at Lockformer

(c) Personal/Sick Leave: The Debtor has the following personal/sick leave policy:

(i) IPI Non-Union Salary: 5 personal days per year received on January 1 - if not used by December 31 are forfeited.

(ii) IPI Non-Union Hourly and Union Hourly: 5 personal days per year received: 2 days June 1, 1 day September 1, 2 days December 1. If not used by May 31, they are frozen and paid out on December 15th of the same year.

(iii) Lockformer Salary And Non-Union Hourly: 6 days per year to be used from January through December with no carryover.

(iv) Lockformer Union: 3 personal days per year, January through December, and unused time is compensated in February the following year. Personal time may not be carried from year to year.

(d) Severance Policy: The Debtor has the following personal/sick leave policy:

(i) IPI Non-Union salary and hourly:

0-6 months = 0

6 months - 2 years = 1 month

2 years - 8 years = 2 months

8 years or greater, plus upper management = 3 months

(ii) IPI Union hourly: No severance pay

(iii) Lockformer Non-Union: 3 days pay for each full year plus proportionate amount for partial year's service; for employees with five years or more service. With less than five years, only full years of employment are counted.

(iv) Lockformer Union: Employees who are laid off permanently from active employment by the Debtor as a result of permanent plant closure, total sale of assets or sale of the plant to a purchaser unwilling to assume labor agreement substantially unchanged, shall receive severance payments in line with the following schedule:

Years of service at time of separation

More than 25 200 hours pay

21 - 24 160 hours pay

16 - 20 120 hours pay

6-15 80 hours pay

(e) Reimbursement of Expenses: The Debtor's policy with regard to reimbursement of expenses is 100% reimbursement for air, car, hotel, etc. and a per diem for food expenses in the amount of \$50/day.

11. Medical Plan. The Debtor's medical plan for employees is as follows:

(a) IPI Union and Non-Union full-time employees have their medical and dental benefits administered through First Administrators, Inc. This is a self-insured plan. Non-Union employees also have limited vision and chiropractic coverage. The non-union employees have a PPO plan and the union employees have a health plan, sometimes called a "Major Medical plan". The employees pay a monthly premium toward this insurance, different for union and non-union.

(i) IPI Union and Non-Union employees also have prescription coverage through Mestek's national plan with Merck-Medco. Co-pays apply to prescriptions.

(ii) Lockformer Union and Non-Union full-time employees have their dental and vision benefits administered through First Administrators, Inc. This is a self-insured plan. Union and Non-Union full-time employees have their medical benefits (including Chiropractor) with Aetna (as part of Mestek's national plan). Both Union and Non-Union employees have a PPO plan. The employees pay a monthly premium toward this insurance - union and non-union have the same premiums. Union and Non-Union employees also have prescription coverage through Mestek's national plan with Merck-Medco. Co-pays apply to prescriptions.

12. Life Insurance.

(a) IPI union employees have life insurance in the amount of \$50,000 through the Union contract. IPI non-union employees have life insurance at the rate of 1.5x their annual salary rounded to the next \$1,000.

(i) Lockformer union employees have life insurance in the amount of \$40,000 through the Union contract.

(ii) Lockformer non-union employees have life insurance at different levels based upon salary. The schedule is as follows:

Earnings:	Class Level	Amount of Life Ins.
10,000 - 12,499	C	20,000
13,000 - 14,999	D	22,500
15,000 - 17,499	E	25,000
17,500 - 19,999	F	27,500
20,000 - 24,999	G	30,000
25,000 - 29,999	H	35,000
30,000 - 34,999	I	40,000
35,000 - 39,999	J	45,000
40,000 - 44,999	K	50,000

45,000 - 49,999	L	55,000
50,000 or more	M	60,000

13. Disability. The Debtor has the following disability plan:

(a) IPI union employees have coverage through Prudential Ins. Co. The short-term disability plan has 104 weeks of coverage at a maximum of \$600/week. IPI non-union employees have coverage with Prudential Ins. Co. The long-term disability plan has a 30 day waiting period with coverage at 60% of pay.

(b) Lockformer union employees have a self-insured 6-month short-term disability plan at the rate of \$300/week. Lockformer non-union employees have coverage through Prudential Ins. Co. The long-term disability plan has a 6-month waiting period with coverage at 60% of pay.

14. Retirement Plans. In general, the Debtor has the following retirement plans:

(a) The Debtor's 401(k) plans are through Mestek's Saving and Retirement Plan and are held at Mass Mutual. The IPI union employees have a company contribution per the union contract at \$1.30/hour (reg, OT, vac, personal, holiday). They can defer contributions into the plan at the IRS limits. IPI and Lockformer non-union employees have a company contribution of 25% match to 6% (or 1.5% max) and there is a 3% profit sharing contribution. They can defer contributions into the plan at the IRS limits. The Lockformer union employees have a company contribution of \$0.50/hour paid into the I.A.M.A.W. National Pension Fund (defined benefit plan). They can defer contributions into the 401(k) plan at the IRS limits.

(b) There is a frozen Met-Coil Pension Plan that consists of three prior frozen plans that were merged together. They consist of IPI union employees, Lockformer union employees, and Lockformer office employees. With the plans frozen, no new entrants can opt into the plan.

RELIEF REQUESTED

15. By this Motion, the Debtor respectfully requests the entry of an order

(a) authorizing, but not requiring, (i) the payment on regularly scheduled post-petition pay dates of Prepetition Compensation, Deductions, and Benefits in accordance with the policies and practices established by the Debtor prior to the Petition Date, (ii) the continuation of the Debtor's employee benefit programs post-petition, (iii) the making of accrued prepetition contributions or payment directly on account of Employee Benefit Plans, (iv) the payment of

any and all local, State and federal tax withholdings related to the prepetition period (including all withholding taxes, Social Security taxes and Medicare taxes as well as union dues, charitable contributions and garnishment obligations, if any) or funds accruing prepetition including, without limitation, trust fund taxes, tax deposits and processing fees ("**Trust Fund Taxes**"), and (v) authorizing the payment of Prepetition Expenses; and (b) directing all banks to honor prepetition checks for payment of prepetition employee claims. The Debtor also requests that, in the event checks issued for Prepetition Compensation, Deductions, Benefits, Trust Fund Taxes and Prepetition Expenses and any other payments authorized by this Motion are not honored, the Debtor will be authorized to reissue such checks.

16. The Debtor requests that all banks and other financial institutions be authorized and directed to receive, process, honor and pay any and all checks drawn on the Debtor's payroll and other disbursement accounts to pay Prepetition Compensation, Deductions, Benefits, Prepetition Expenses and funds deducted from payroll including, without limitation, Trust Fund Taxes, whether such checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

17. The Debtor represents that such checks are drawn on identifiable payroll and disbursement accounts and can be readily identified as relating directly to the authorized payment of Prepetition Compensation, Deductions, Benefits, Prepetition Expenses and funds deducted from payroll including, without limitation, Trust Fund Taxes. Accordingly, the Debtor believes that checks, other than those relating to authorized payments, will not be honored inadvertently.

BASIS FOR RELIEF REQUESTED

18. The Bankruptcy Code supports the payment of prepetition employee obligations. Most of these obligations qualify for priority treatment under §§ 507(a)(3) and (a)(4) of the Bankruptcy Code. Under § 507(a)(3) of the Bankruptcy Code, each Employee may be granted a priority claim for:

allowed unsecured claims, but only to the extent of \$4,650 for each individual or corporation, as the case may be, earned within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for —

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual[.]

11 U.S.C. § 507(a)(3).

19. Supplementing the § 507(a)(3) wage and salary priority provision, § 507(a)(4) grants priority status to certain unpaid contributions to employee benefit plans arising from services rendered within 180 days before the filing of a debtor's bankruptcy petition. Pursuant to this provision, priority is extended to the extent that, with respect to each benefit plan, the employees, in the aggregate, have not reached their \$4,650 per employee wage and salary limit under § 507(a)(3) of the Bankruptcy Code.

20. Given the priority status of employee claims, this Court should exercise its broad equitable powers under § 105(a) of the Bankruptcy Code to authorize the payment of prepetition employee obligations. The Debtor believes that few, if any, Employees are owed in excess of \$4,650 on account of Prepetition Compensation and Benefits as of the Petition Date. Accordingly, substantially all of the Debtor's employee obligations described herein, with the exception of Prepetition Expenses, constitute priority claims under § 507(a)(3) of the Bankruptcy Code. The Debtor submits that to the extent any Employee is owed in excess

of \$4,650 on account of Prepetition Compensation, Deductions, Benefits and Prepetition Expenses, payment of such amounts is necessary, appropriate, and authorized under § 105(a) of the Bankruptcy Code and the "doctrine of necessity".

21. Many of the employees of the Debtor are completely reliant on the timely payment of their compensation to cover their monthly living expenses. Failure to allow full payment of these amounts would inflict great hardship on the Employees and would likely result in many of them terminating employment with the Debtor. Moreover, nonpayment of these amounts would seriously damage morale at a time when the Debtor can ill afford to be without the full commitment of its Employees.

22. Failure to pay Trust Fund Taxes would expose the Debtor and its officers to possible civil penalties. Payment of Trust Fund Taxes will not prejudice other creditors of the Debtor's estate, given that the relevant taxing authorities would hold a priority claim under § 507(a)(8) of the Bankruptcy Code in respect of such obligations, and the Trust Fund Taxes are not property of a debtor's estate. See Begier v. Internal Revenue Serv., 496 U.S. 53 (1990).

23. Payment of the Prepetition Compensation and Benefits and continuing, the employee benefit programs are vital to ensure a continued, well-qualified workforce at the Debtor and thus the continued operation of the Debtor's business.

24. Section 105(a) of the Bankruptcy Code provides that "[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The purpose of § 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." 2 COLLIER ON BANKRUPTCY ¶ 105.01, at 105-5-6 (15th ed. 2000). This broad

equitable mandate has been applied to authorize debtors to pay prepetition employee claims when such payment is necessary for the continuity of the business and the reorganization efforts. See, e.g., Miltenberger v. Logansport, Crawfordsville & Southwestern Rys. Co., 106 U.S. 286, 312 (1882); In re Lehigh & New England Ry., 657 F.2d 581 (3d Cir. 1981); In re Just for Feet, Inc., 242 B.R. 821, 825 (D. Del. 1999).

25. Numerous courts, including this Court, have recognized the validity of the foregoing justifications for allowing the Debtor to pay the Prepetition Compensation, Deductions, Benefits, Prepetition Expenses and Trust Fund Taxes and, as a result, have routinely granted relief similar to that requested herein. See, e.g., In re Fleming Cos., Inc., Case No. 03-10945 (MFW) (Bankr. D. Del. 2003); In re Warehouse Entm't., Inc., Case No. 03-10224 (PJW) (Bankr. D. Del. 2003); In re FAO, Inc., Case No. 10119 (LK) (Bankr. D. Del. 2003); In re Oakwood Homes Corp., Case No. 02-13396 (PJW) (Bankr. D. Del. 2002); In re Trend Holdings, Inc., Case No. 02-13283 (PJW) (Bankr. D. Del. 2002); In re Teleglobe Communications Corporation, Case No. 02-11518 (MFW) (Bankr. D. Del. 2002); In re Questron Technology, Inc., Case No. 02-10319 (EIK) (Bankr. D. Del. 2002); In re NII Holdings, Inc., Case No. 02-11505 (MFW) (Bankr. D. Del. 2002); In re Genesis Health Ventures, Inc., Case No. 00-02692 (PJW) (Bankr. D. Del. 2000). Moreover, nothing herein shall be deemed an admission or otherwise that such contract is an executory contract for purposes of Section 365 of the Bankruptcy Code or otherwise.

26. Nothing in this Motion should be construed as a request for authority to assume any executory contract under § 365 of the Bankruptcy Code, including, without limitation, any employment contracts, severance agreements or union contracts. Moreover,

nothing herein shall be deemed an admission or otherwise that such contract is an executory contract for purposes of § 365 of the Bankruptcy Code or otherwise.

NOTICE AND PRIOR APPLICATION

27. Notice of this 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; and (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"). As this Motion is seeking "first day" relief, notice of this Motion and any Order entered respecting this Motion will be served as required by Del. Bankr. LR 9013-2(d). The Debtor submits that under the circumstances no other or further notice need be given.

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

CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter an Order substantially in the form annexed hereto, (i) authorizing (a) the Debtor's payment of Prepetition Compensation, Benefits, Trust Fund Taxes and Prepetition Expenses, (b) the continuation of the Debtor's employee benefit programs postpetition, (c) contributions to employee benefit plans and (d) reimbursement of employee prepetition business expenses, (ii) directing all banks to honor related checks, and (iii) granting such other and further relief as the Court deems just and proper under the circumstances.

Dated: August 26, 2003

MORRIS, NICHOLS, ARSHT & TUNNELL



Robert J. Dehney (No. 3578)
Eric D. Schwartz (No. 3134)
James C. Carignan (No. 4230)
1201 North Market Street
P.O. Box 1347
Wilmington, Delaware 19899-1347
(302) 658-9200

- and -

GOLDBERG KOHN BELL BLACK
ROSENBLUM & MORITZ, LTD.
Ronald Barliant (Illinois ARDC# 0112984)
55 East Monroe Street, Suite 3700
Chicago, Illinois 60603
Telephone: (312) 201-4000
Facsimile: (312) 332-2196

Proposed attorneys for the Debtor and
Debtor-in-Possession