

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

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

**DEBTOR'S APPLICATION FOR ENTRY OF ORDER AUTHORIZING  
RETENTION AND EMPLOYMENT OF THE LAW FIRM  
OF GOLDBERG, KOHN, BELL, BLACK, ROSENBLOOM & MORITZ, LTD.,  
AS COUNSEL FOR DEBTOR, *NUNC PRO TUNC* AS OF THE PETITION DATE**

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 application (the "**Application**") for entry of an Order authorizing the Debtor to retain and employ the law firm of Goldberg, Kohn, Bell, Black, Rosenbloom & Moritz, Ltd. ("**Goldberg Kohn**"), as counsel for the Debtor, *nunc pro tunc* as of the Petition Date (as defined below). In support of the Application, the Debtor refers to and relies upon the Affidavit of Charles F. Kuoni III in Support of First Day Motions (the "**Kuoni Affidavit**") and the Affidavit of Ronald Barliant (attached hereto as **Exhibit A**, the "**Barliant Affidavit**"), which were filed contemporaneously herewith and are incorporated herein by reference, and respectfully represents as follows:

**JURISDICTION AND VENUE**

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

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 § 327(a) of title 11 of the United States Code (the "**Bankruptcy Code**") and Rules 2014(a) and 2016 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

### **INTRODUCTION**

4. On August 27, 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. To date, no trustee, examiner, or official committee of unsecured creditors has been appointed.

### **RELIEF REQUESTED**

6. By this Application, the Debtor respectfully requests that the Court enter an Order, pursuant to § 327(a) of the Bankruptcy Code, authorizing the Debtor to employ and retain Goldberg Kohn as its attorneys in the Case.

7. Prior to the Petition Date, the Debtor and Goldberg Kohn entered into that certain engagement letter dated July 31, 2003, a copy which of which is attached to the Barliant Affidavit as **Exhibit 1** and incorporated herein by reference (the "**Engagement Letter**"). By this Application, the Debtor requests that the terms and conditions of the Engagement Letter be approved.

### **SERVICES RENDERED**

8. The Debtor anticipates that Goldberg Kohn may render the following services in the Case:

- (a) providing legal advice with respect to the Debtor's powers and duties as debtor in possession in the continued operation of its business and management of its properties;

- (b) pursuing development and confirmation of a plan and approval of a disclosure statement;
- (c) preparing, on behalf of the Debtor, all necessary applications, motions, answers, orders, reports and other legal papers as required by applicable bankruptcy or non-bankruptcy law, as dictated by the demands of the Case, or as required by the Court, and representing the Debtor in any hearings or proceedings related thereto;
- (d) appearing in Court and protecting the interests of the Debtor before the Court;
- (e) assisting with any disposition of the Debtor's assets, by sale or otherwise; and
- (f) performing all other legal services for the Debtor which may be necessary and proper in the case.

9. The Debtor has filed an application to retain Morris, Nichols, Arsht & Tunnell, as its local counsel. The services to be provided by Goldberg Kohn will not be duplicative of its local counsel, and Goldberg Kohn will coordinate any services performed at the Debtor's request with the services of local counsel, as appropriate, to avoid duplication of effort.

10. The Debtor also has filed a Motion to retain certain ordinary course professionals that have represented Met-Coil in several pending environmental litigation matters and assisted Met-Coil with its environmental remediation efforts. The services to be provided by Goldberg Kohn will not be duplicative of those provided by the ordinary course professionals, and Goldberg Kohn will coordinate any services performed at the Debtor's request with the services of the ordinary course professionals, as appropriate, to avoid duplication of effort.

11. Subject to this Court's approval of the Application, Goldberg Kohn is willing to serve as the Debtor's counsel and to perform the services described above.

## **QUALIFICATIONS OF PROFESSIONALS**

12. The Debtor seeks to retain Goldberg Kohn as its attorneys because (a) the firm has extensive general experience and knowledge in the fields of debtors' and creditors' rights and business reorganizations under Chapter 11 of the Bankruptcy Code, (b) the firm has experience and knowledge practicing before this Court, and (c) the firm's appearance before this Court for the applications, motions and other matters in the Case will be efficient and cost effective for the Debtor's estate. The Debtor believes that Goldberg Kohn is both well-qualified and uniquely able to represent them in the Case in an efficient and timely manner.

13. Moreover, Goldberg Kohn is well-suited for the type of representation required by the Debtors. Goldberg Kohn employs attorneys in almost every practice area, including bankruptcy, workouts, litigation, employment, business and commercial law, real estate and securities law. Accordingly, the Debtor has determined that Goldberg Kohn has the resources and experience necessary to represent it in the Case.

14. Goldberg Kohn is familiar with the Debtor's operations. Goldberg Kohn has aided the Debtor in its prepetition negotiations with creditors. Through this process, Goldberg Kohn has become uniquely familiar with all facets of the Debtor's business and operations. Thus, the Debtor desires that Goldberg Kohn continue to represent it in connection with the Case. The Debtor believes that Goldberg Kohn's employment is in the best interests of the Debtor, its estate and its creditors.

## **DISINTERESTEDNESS OF PROFESSIONAL**

15. Goldberg Kohn has completed a conflicts check that compares (a) the Debtor's name and the names of the Debtor's divisions; (b) the names of the Debtor's officers

and directors; (c) the names of the Debtor's prepetition and postpetition lenders; (d) the names of the Debtor's creditors listed on **Exhibit 2** to the Barliant Affidavit, and (e) the names of other professionals involved in the Case, against a list of Goldberg Kohn's current and former clients.

16. To the best of the Debtor's knowledge, based upon the Barliant Affidavit and except as set forth herein, Goldberg Kohn does not hold or represent any interest adverse to the Debtor or its Chapter 11 estate, its creditors, or any other party in interest, and Goldberg Kohn is a "disinterested person" as such term is defined in section 101(14) of the Bankruptcy Code.

17. Periodically, Goldberg Kohn may have represented certain creditors of the Debtor's estate in matters unrelated to the Debtor or the Case. These creditors are disclosed in the Barliant Affidavit.

18. Except as set forth herein and in the Barliant Affidavit, to the best of the Debtor's knowledge, neither Goldberg Kohn nor its principals or associates have any connections with the Debtor, its creditors, any other parties in interest, their current respective attorneys, the United States Trustee for the District of Delaware or any person employed in the Office for the United States Trustee of the District of Delaware.

19. Goldberg Kohn has not provided, and will not provide, professional services to any of the creditors, other parties-in-interest, or their attorneys with regard to any matter related to the Case.

#### **COMPENSATION**

20. Goldberg Kohn's requested compensation for professional services rendered to the Debtor will be based upon the hours actually expended by each assigned

professional at each professional's hourly billing rate. The Debtor has agreed to compensate Goldberg Kohn for professional services rendered at its normal and customary hourly rates.

21. In the normal course of business, Goldberg Kohn revises its hourly rates in or about January of each year. Goldberg Kohn requests that the rates listed below be revised to the hourly rates that will be in effect at such time.

22. Goldberg Kohn has advised the Debtor that the current hourly rates applicable to the principal attorneys and paralegals proposed to represent the Debtor are as follows:

<u>Attorney</u>	<u>Hourly Rate</u>
Ronald Barliant, principal-bankruptcy	\$515.00 per hour
Gerald F. Munitz, principal-bankruptcy	\$515.00 per hour
Alan P. Solow, principal-bankruptcy	\$515.00 per hour
David E. Morrison, principal-litigation	\$305.00 per hour
Kathryn A. Pamenter, associate-bankruptcy	\$320.00 per hour
Andrew E. Weissman, associate-bankruptcy	\$245.00 per hour
Matthew H. Metcalf, associate-litigation	\$240.00 per hour

**Paralegal**

Lauren M. Rosman	\$100.00 per hour
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Other attorneys and paralegals will render services to the Debtor as needed. Generally, Goldberg Kohn's hourly rates are in the following ranges:

<u>Title</u>	<u>Rate per Hour</u>
Principals	\$300.00 to \$515.00
Associates	\$175.00 to \$320.00
Legal Assistants/Paralegals	\$100.00 to \$155.00

23. Goldberg Kohn will also seek reimbursement for necessary expenses incurred, which shall include travel, photocopying, delivery service, postage, vendor charges and other out-of-pocket expenses incurred in providing professional services.

24. Goldberg Kohn intends to apply to the Court for the allowance of compensation for professional services rendered and reimbursement of expenses incurred in accordance with the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the District of Delaware. Goldberg Kohn has agreed to accept as compensation such sums as may be allowed by the Court. Goldberg Kohn understands that interim and final fee awards are subject to approval by this Court.

25. Goldberg Kohn has received an advance payment retainer of \$250,000.00 from the Debtor. Of the prepetition amounts received by Goldberg, Kohn, Goldberg, Kohn has applied approximately \$200,000 as payments for services rendered and expenses incurred prior to the Petition Date. Any amounts from this retainer in excess of fees and expenses incurred before the Petition Date will be held by Goldberg Kohn and applied against its final allowed postpetition fees and expenses. In accordance with the Engagement Letter, Goldberg Kohn's retainer should at all times be no less than \$100,000. Goldberg Kohn is not a prepetition creditor of the Debtor's estate.

#### **NOTICE AND PRIOR APPLICATION**

26. Notice of this Application 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"). The Debtor submits that under the circumstances no other or further notice need be given.

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

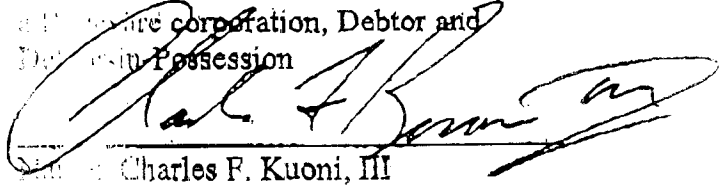


**CONCLUSION**

**WHEREFORE**, the Debtor respectfully requests that the Court enter an Order in substantially the form annexed hereto, (i) granting this Application; (ii) authorizing the Debtor to retain and employ Goldberg Kohn as its counsel, *nunc pro tunc* as of the Petition Date in the Case; and (iii) granting such other and further relief as this Court may deem just and proper under the circumstances.

Dated: September 2, 2003

MINI-BOIL SYSTEMS CORPORATION,  
a Delaware corporation, Debtor and  
Debtor in Possession



Charles F. Kuoni, III