

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT OF LAW DIVISION

JURY DEMAND

HONEYWELL INTERNATIONAL,)
INC., a Delaware corporation,)
)
Plaintiff,)
)
v.)
)
MESTEK, INC., a Pennsylvania)
corporation, and FORMTEK, INC., a)
Delaware corporation,)
)
Defendants.)
)
)

No.

JURY TRIAL DEMANDED

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COMPLAINT

Plaintiff Honeywell International Inc. ("Honeywell") complains of defendants Mestek, Inc. ("Mestek") and Formtek, Inc. ("Formtek") as follows:

PARTIES

1. Honeywell manufactures and provides aerospace products and services, control technologies, specialty chemicals, automotive products, fibers, plastics, and electronic materials. It is a Delaware corporation with its principal place of business in Morristown, New Jersey.

2. Mestek manufactures and distributes products in the heating, ventilating and air conditioning industry. It is a Pennsylvania corporation with its principal place of business in Westfield, Massachusetts.

3. Formtek is a wholly-owned subsidiary of its parent, Mestek. Formtek owns and operates several companies that design, build and service metal forming and

fabricating systems. Formtek is a Delaware corporation with its principal place of business in Itasca, Illinois.

JURISDICTION AND VENUE

4. Mestek and Formtek regularly and continuously do business in the State of Illinois. The transactions, lawsuits and occurrences that give rise to Honeywell's claims arose, in substantial part, in Illinois. This Court therefore has jurisdiction over the defendants pursuant to 735 ILCS 5/2-209(a)(1), (2), (3) and (7).

5. Upon information and belief, Mestek is no longer authorized to do business in Illinois. However, Mestek has done and continues to do business in Cook County, Illinois, and should be considered a resident of Cook County. As a foreign corporation authorized to transact business in Illinois and doing business in Cook County, Illinois, Formtek is also a resident of Cook County under 735 ILCS 5/2-102. The transactions, or some part thereof, that give rise to Honeywell's claims also occurred in Cook County, Illinois. Venue is therefore proper in Cook County, Illinois, under 735 ILCS 5/2-101.

THE INDEMNITY AGREEMENT

6. On or about March 31, 1993, The Lockformer Company, a predecessor to and current subsidiary of Mestek and Formtek, filed a lawsuit against AlliedSignal, Inc. ("AlliedSignal") in the United States District Court for the Northern District of Illinois, entitled *The Lockformer Company v. AlliedSignal, Inc.*, No. 93 C 1934 (the "Lawsuit"). In the Lawsuit, Lockformer alleged that AlliedSignal was liable to Lockformer for investigation and remediation costs relating to alleged trichloroethylene ("TCE")

contamination of soil and groundwater at the Lockformer facility in Lisle, Illinois (the "Lockformer Facility"). AlliedSignal denied all liability for the alleged contamination.

7. In or about December 1994, Lockformer, Met-Coil Systems Corporation, another predecessor to and current subsidiary of Mestek and Formtek ("Met-Coil"), and AlliedSignal settled and resolved the Lawsuit, entering into a Settlement, Release and Indemnity Agreement (the "Indemnity Agreement"). Lockformer and Met-Coil executed the Indemnity Agreement on December 6, 1994. A copy of the Indemnity Agreement is attached hereto as Exhibit A and is incorporated herein by reference.

8. The Indemnity Agreement provides, in part, as follows:

Lockformer and Met-Coil, and their respective officers, directors, shareholders and employees hereby forever release, acquit and discharge AlliedSignal from all claims, demands, damages, expenses, costs, attorney's fees, actions and liabilities of any kind and nature, known or unknown, past, present or future, for or because of any matter or thing done or omitted, alleged to have been done or omitted, or suffered to be done or omitted by AlliedSignal and related to any of the following: any and all transactions, events or claims alleged in the complaint or pleadings on file in the Lawsuit; any and all claims of first party insurance benefits (whether or not subrogated); any and all claims, including but not limited to personal injury and property damage, arising out of or related to the sale, use, delivery, repair or replacement of any TCE storage tank or related stand pipes; the sale, delivery, use, or disposal or trichloroethylene ("TCE") or components containing TCE at the Property; any and all soil, air, water, or groundwater contamination or impact, personal injury, property damage, business interruption or lost business of any kind caused or related to, or alleged to have been caused or related to TCE, or any other compounds containing TCE.

* * *

Lockformer and Met-Coil agree to defend, hold harmless, and indemnify AlliedSignal from all claims, demands, damages, expenses, costs, attorneys' fees, actions and liabilities of any kind and nature, whether known or unknown, past, present, or future whether threatened or brought by any person or entity,

private, governmental, or otherwise regardless of whether any such claims, demands, damages, expenses, costs, attorneys' fees, actions or liabilities arise from, purport to arise from, or are caused by negligence, alleged negligence, strict liability, alleged strict liability, or other act or omission on the part of AlliedSignal (including but not limited to, the sole, joint or concurrent negligence, acts or omissions of AlliedSignal) that have been or may be brought against AlliedSignal by any person or entity seeking compensation for damages or other relief from AlliedSignal, as a result of any and all transactions, events, or claims alleged in the complaint and pleadings in the Lawsuit, any and all claims, including but not limited to personal injury and property damage, arising out of or related to the sale, use, repair, delivery or disposal of any storage tank and related equipment; the sale, delivery, use, storage, removal or disposal of any TCE or compounds containing TCE; and/or any and all soil, air, water or groundwater contamination or impact, personal injury, property damage, business interruption or lost business, caused by or related to, or alleged to have been caused by or related to TCE.

(Indemnity Agreement at ¶¶ A, B (pp. 2-4).)

9. Lockformer existed as an Illinois corporation from approximately December 6, 1946 until approximately October 27, 2000, when it was merged into Met-Coil. Lockformer is no longer an independent company, but is now a division of Met-Coil.

10. Met-Coil is a Delaware corporation with its principal place of business in Cedar Rapids, Iowa.

11. On or about June 3, 2000, Mestek, through its subsidiary Formtek, acquired 100% of the stock of Met-Coil (the "Mestek Acquisition"). Mestek is the direct parent of Formtek, and Formtek is the direct parent of Met-Coil. The Mestek Acquisition was effected pursuant to an agreement under which Met-Coil Systems Corporation, a predecessor to Met-Coil, merged with and into Formtek Acquisition, Inc., a wholly-owned subsidiary of Formtek. Immediately thereafter, in accordance with the terms of

the merger agreement, the Met-Coil shareholders were redeemed for a cash consideration of approximately \$33,600,000. After the merger, Formtek Acquisition, Inc. was renamed Met-Coil Systems Corporation.

12. Mestek and Formtek had full knowledge of the Indemnity Agreement, but nonetheless purchased the stock of Met-Coil, thereby assuming the obligations of the Indemnity Agreement as a matter of law as the successors of Met-Coil.

13. Since approximately June 2000, Mestek has owned or operated Lockformer and Met-Coil. Mestek also directs and controls the environmental decisions and matters of Lockformer and Met-Coil.

14. Pursuant to the Indemnity Agreement, "Lockformer" and "Met-Coil" are defined to include not only Lockformer and Met-Coil, but also their "parents, subsidiaries, affiliated companies, predecessors, successors, assigns and joint ventures." (*Id.* at p. 2.)

15. Mestek is the parent company of, successor to, a company affiliated with, an assignee of, or a joint venturer with, Lockformer and Met-Coil, or is otherwise included in the definition of "Lockformer" and "Met-Coil" as set forth in the Indemnity Agreement.

16. Formtek is the parent company of, successor to, a company affiliated with, an assignee of, or a joint venturer with, Lockformer and Met-Coil, or is otherwise included in the definition of "Lockformer" and "Met-Coil" as set forth in the Indemnity Agreement.

17. Mestek and Formtek are thus directly liable for the obligations of the Indemnity Agreement by virtue of their status of parents, successors, affiliates, assignees or joint venturers.

18. Mestek, Met-Coil and/or Lockformer have admitted that their obligations under the Indemnity Agreement are absolute, immediate and unconditional.

19. In 1999, AlliedSignal changed its name to Honeywell International Inc. Honeywell International Inc. has succeeded to all rights of AlliedSignal under the Agreement.

HONEYWELL'S COSTS UNDER THE INDEMNITY AGREEMENT

20. Honeywell has been named as a defendant in the following actions regarding alleged TCE contamination at the Lockformer Facility. These actions are subject to the terms of the Indemnity Agreement:

- a) *LeClercq, et al. v. The Lockformer Company, et al.*, 00 C 7164 (N.D. Ill.);
- b) *Mejdrech, et al. v. The Lockformer Company, et al.*, 01 C 6107 (N.D. Ill.);
- c) *DeVane, et al. v. The Lockformer Company, et al.*, 01 L 377 (DuPage County, Ill.);
- d) *Pelzer, et al. v. The Lockformer Company, et al.*, 01 C 6485 (N.D. Ill.);
- e) *Meyer, et al. v. The Lockformer Company, et al.*, 02 C 2672 (N.D. Ill.);
- f) *Schreiber v. The Lockformer Company, et al.*, 02 C 6097 (N.D. Ill.);
- g) *Hallmer v. The Lockformer Company, et al.*, 02 C 7066 (N.D. Ill.);
- h) *Ehrhart v. The Lockformer Company, et al.*, 02 C 7068 (N.D. Ill.);
- i) *Wroble v. The Lockformer Company, et al.*, 02 C 4992 (N.D. Ill.); and
- j) *People of the State of Illinois v. The Lockformer Company, et al.*, 00 CH 62 (Du Page County, Ill.).

These actions are referred to herein as the "Lockformer Actions."

21. The Lockformer Actions all arise out of the alleged use, storage, removal or disposal of TCE or compounds containing TCE at the Lockformer Facility, and involve allegations of soil, water, and groundwater contamination or impact, personal injury and/or property damage allegedly relating to Lockformer's, Met-Coil's or Mestek's use of TCE.

22. Lockformer and Met-Coil have caused releases of chemicals at the Lockformer Facility, including releases from the use of their degreasing system and their sewer pipe.

23. In the Lockformer Actions, Honeywell asserted cross-claims for contribution and indemnification under the Indemnity Agreement against Lockformer, Met-Coil and Mestek.

24. On or about May 22, 2002, Lockformer, Met-Coil and Mestek agreed to pay approximately \$10 million to settle the *LeClercq* case, which was a class action asserted on behalf of approximately 185 homeowners living south of the Lockformer Facility. Honeywell was a party and signatory to that settlement agreement, but did not contribute any money toward the settlement because Lockformer, Met-Coil and Mestek were obligated to indemnify Honeywell under the Indemnity Agreement.

25. Since 2000, Lockformer, Met-Coil and/or Mestek has complied with the Indemnity Agreement and have paid Honeywell defense costs in an amount in excess of \$1.5 million.

26. In February 2003, at the request of Lockformer, Met-Coil and Mestek, Honeywell entered into a tolling agreement with Lockformer, Met-Coil and Mestek under

which the parties agreed to file agreed joint motions to dismiss, without prejudice, Honeywell's cross-claims for indemnification against Lockformer, Met-Coil and Mestek. Thereafter, Honeywell, Lockformer, Met-Coil and Mestek filed agreed joint motions to dismiss, without prejudice, Honeywell's cross-claims for indemnification against Lockformer, Met-Coil and Mestek in the *Mejdrech*, *Pelzer*, *Meyer*, *Schreiber*, *Hallmer*, *Ehrhart*, and *Wroble* actions. The agreed joint motions were granted, and Honeywell's indemnification cross-claims against Lockformer, Met-Coil and Mestek were dismissed without prejudice.

27. Honeywell has incurred, and will continue to incur, significant attorney's fees, expert witness fees, costs, and other expenses to defend the Lockformer Actions. Pursuant to the Indemnity Agreement, Honeywell has demanded its costs of defense, including attorney's fees, expert witness fees and costs, from Lockformer, Met-Coil and Mestek incurred in the Lockformer Actions.

28. On July 11, 2003, jury verdicts were reached in the *DeVane* action in favor of the owners of six homes or properties located near the Lockformer Facility. The jury awarded the plaintiffs \$368,500 in compensatory damages against Honeywell, Lockformer and Met-Coil. Pursuant to the Indemnity Agreement, Honeywell has demanded indemnification from Lockformer, Met-Coil and Mestek for the amount of this judgment.

29. On or about August 29, 2003, Lockformer, Met-Coil and Mestek agreed, in principle, to pay \$12.5 million to the plaintiffs and class members in the *Mejdrech* action, and \$6 million to the plaintiff in the *Schreiber* action, to settle these two cases. Unlike the settlement negotiations in the *LeClercq* action, Lockformer, Met-Coil and

Mestek did not involve Honeywell in the settlement negotiations in the *Mejdrech* and *Schreiber* actions.

30. On September 4, 2003, Honeywell agreed, in principle, to pay \$2.4 million to the plaintiffs and class members in the *Mejdrech* action, and \$1.2 million to the plaintiff in the *Schreiber* action, to settle these two cases. Pursuant to the Indemnity Agreement, Honeywell has demanded indemnification from Lockformer, Met-Coil and Mestek for the amount of the settlements recently agreed to in the *Mejdrech* and *Schreiber* actions.

THE MET-COIL BANKRUPTCY

31. On August 27, 2003, Met-Coil filed a petition in the United States Bankruptcy Court for the District of Delaware under chapter 11 of the United States Bankruptcy Code.

32. Mestek and Formtek are not debtors in bankruptcy.

MET-COIL IS ALSO THE ALTER EGO OF MESTEK

33. Mestek is also liable under the Indemnity Agreement because Met-Coil is Mestek's alter ego. Since the Mestek Acquisition, Mestek has exerted such dominion and control over its subsidiary Met-Coil that the two entities are essentially one.

34. Within ten days of the Mestek Acquisition, Met-Coil's and Lockformer's environmental consultant was directed by Mestek to stop sending invoices to Lockformer and to begin forwarding all of its TCE-related invoices directly to Mestek for payment.

35. Soon after the Mestek Acquisition, Mestek decided to fire Met-Coil's and Lockformer's environmental consultant, Carlson Environmental. Mestek retained Ronald St. John of Clayton Environmental as the new environmental consultant for TCE issues at

the Lockformer Facility. Mestek retained St. John after St. John met with Mestek Chairman John Reed and Mestek General Counsel (now President) R. Bruce Dewey at Mestek's headquarters in Massachusetts. Met-Coil had no input into the hiring of Clayton Environmental.

36. Although Met-Coil's President James Heitt did not know who hired Clayton Environmental, he later testified that he had final authority on all environmental issues at the Lockformer Facility.

37. Since the Mestek Acquisition, Mestek President Dewey has continually advised Met-Coil President Heitt on TCE issues at the Lockformer Facility, even though Dewey had no official operational role at Met-Coil.

38. Since the Mestek Acquisition, Mestek employee Richard Caldwell has worked out of the Lockformer Facility on Mestek's behalf, reviewing all vendor invoices relating to TCE issues before forwarding such bills to Mestek for payment. Caldwell has also provided Reed and Dewey of Mestek with regular reports on the TCE issues at the Lockformer Facility.

39. Met-Coil President Heitt and Lockformer Facility Plant Manager J.R. Svehla have testified that they had "no idea" regarding Caldwell's position at the Lockformer Facility or the persons to whom he reports, despite Heitt's testimony that Heitt and Svehla were part of the team that manages environmental matters at the Lockformer Facility.

40. Although not named as a party to the Illinois Attorney General's lawsuit regarding TCE contamination at the Lockformer Facility (*People of the State of Illinois v. The Lockformer Company, et al.*, 00 CH 62 (Du Page County, Ill.)), Mestek approved

and directed Lockformer and Met-Coil to enter into an agreed order with the Illinois Attorney General in that action.

41. Since the Mestek Acquisition, Mestek has also directed Lockformer's and Met-Coil's legal and environmental strategy in and defense of the Lockformer Actions.

42. Since the Mestek Acquisition, Mestek has managed and controlled Lockformer's and Met-Coil's relationships with their insurers, even though Mestek is not an insured under those policies.

43. The first settlement Lockformer and Met-Coil entered into a settlement regarding TCE contamination was with the Trotter family toward the end of 2000. Lockformer's and Met-Coil's settlement with this family could not go forward until it was approved by Mestek Chairman and CEO Reed. Reed also approved the hook-up of the Trotter residence to municipal water.

44. Since the Mestek Acquisition, Lockformer and Met-Coil have had to seek authorization from Mestek before forwarding environmental reports to the Illinois Environmental Protection Agency for approval.

45. Since the Mestek Acquisition, Met-Coil has no checking account or emergency cash fund of its own.

46. Since the Mestek Acquisition, Met-Coil must have its non-inventory expenditures in excess of \$1,000 approved by Mestek Chairman and CEO Reed, even though Reed has no operational role at Met-Coil.

47. Since the Mestek Acquisition, Met-Coil's "tangible net assets" have included no cash, and are valued at only \$10,250,000.

48. Since the Mestek Acquisition, Mestek has handled and directed Met-Coil's payroll, accounts payable, human resources, information technology, and its regulatory and legal matters.

49. Since the Mestek Acquisition, Mestek has collected payments from Met-Coil's customers.

50. Since the Mestek Acquisition, Met-Coil no longer prepares its own financial statements. Mestek now prepares Met-Coil's financial statements, and the financial statements and reporting of Met-Coil are consolidated with those of Mestek.

51. Met-Coil has not paid dividends since June 2000.

52. Since the Mestek Acquisition, Met-Coil's Board of Directors has never met and has never had any discussions or taken any action regarding the TCE contamination at the Lockformer facility. Other than approving conversion to Mestek's 401(k) plan, Met-Coil's Board has taken no substantive action since June 2000. Before the acquisition by Mestek, Met-Coil's Board met on a quarterly basis in face-to-face meetings.

53. Met-Coil President and Board Member Heitt has testified that he does not know how Met-Coil company officers are chosen and further testified that "some other board of directors" might make those decisions.

54. Mestek has extended credit to Met-Coil in excess of \$20 million for Met-Coil's business and environmental obligations. Mestek has also agreed to provide debtor-in-possession financing to Met-Coil.

55. In the Met-Coil bankruptcy proceeding, Met-Coil has admitted that there is a "substantial risk" that Met-Coil will be found to be Mestek's alter ego in the

Lockformer Actions and has suggested that it may seek to pierce its corporate veil to protect Mestek in the bankruptcy proceedings.

56. At all relevant times, there has been such unity of interest and ownership between Mestek and Met-Coil that they have not existed as separate corporate entities.

COUNT I – BREACH OF CONTRACT (against Mestek and Formtek)

57. Honeywell incorporates by reference and realleges paragraphs 1 through 56 as paragraph 57.

58. Honeywell has fully performed all of its obligations and all conditions precedent under the Indemnity Agreement.

59. Mestek and Formtek are liable to Honeywell under the Indemnity Agreement because they are Lockformer's and Met-Coil's parent companies, successors, affiliates and/or assigns.

60. Until recently, Mestek had honored its obligations under the Indemnity Agreement by paying all of Honeywell's costs of defense and also by paying any share of the *LeClercq* settlement that may have been attributable to Honeywell.

61. As of the date of this Complaint, Mestek and Formtek owe Honeywell over \$500,000 of incurred costs that are subject to the Indemnity Agreement. Mestek and Formtek have refused to pay Honeywell these costs.

62. On or about September 5, 2003, Mestek filed a Complaint for Declaratory and Injunctive Relief in the United States Bankruptcy Court for the District of Delaware seeking, among other relief, a judgment declaring that Mestek is not liable to Honeywell under the Indemnity Agreement.

63. By refusing to pay Honeywell what Honeywell is owed under the Indemnity Agreement, Mestek and Formtek have breached the Indemnity Agreement with Honeywell.

64. Honeywell has been damaged by Mestek's and Formtek's breach of the Indemnity Agreement. As a result of their breach, Honeywell will have to pay the unreimbursed costs it has incurred, and will incur, in defending the Lockformer Actions, in addition to any amounts it will have to pay as a result of the *DeVane* judgment and the settlements in *Mejdrech* and *Schreiber*, and any other future judgments and settlements.

Wherefore, Honeywell respectfully requests that this Court:

- A. Enter judgment in Honeywell's favor on Count I of this Complaint;
- B. Award Honeywell damages in an amount to be proved at trial;
- C. Award Honeywell its reasonable attorney's fees and other costs of prosecuting this action; and
- D. Grant Honeywell such other relief as the Court deems just.

COUNT II – DECLARATORY JUDGMENT (against Mestek and Formtek)

65. Honeywell incorporates by reference and realleges paragraphs 1 through 64 as paragraph 65.

66. Honeywell requests that the Court declare pursuant to 735 ILCS 5/2-701 that: (a) Mestek and Formtek are liable to Honeywell under the Indemnity Agreement; and (b) Mestek and Formtek have breached the Indemnity Agreement. This declaration will terminate part of the controversy between the parties in this proceeding.

Wherefore, Honeywell respectfully requests that this Court:

- A. Enter judgment in Honeywell's favor on Count II of this Complaint;

- B. Declare that: (a) Mestek and Formtek are liable to Honeywell under the Indemnity Agreement; and (b) Mestek and Formtek have breached the Indemnity Agreement.
- C. Grant Honeywell its reasonable attorney's fees and other costs of prosecuting this action; and;
- D. Grant Honeywell such other relief as the Court deems just.

COUNT III – BREACH OF CONTRACT (against Mestek/Alter Ego)

67. Honeywell incorporates by reference and realleges paragraphs 1 through 66 as paragraph 67.

68. At all relevant times, there has existed a unity of interest and ownership between Mestek and Met-Coil, and they have engaged in conduct inconsistent with the maintenance of separate and distinct corporate identities.

69. Adherence to the fiction of a Met-Coil separate corporate existence would have unjust and inequitable consequences for Honeywell.

70. Because Mestek has treated Met-Coil as its alter ego, Mestek is liable for Met-Coil's obligations under the Indemnity Agreement.

Wherefore, Honeywell respectfully requests that this Court:

- A. Enter judgment in Honeywell's favor on Count III of this Complaint;
- B. Award Honeywell damages in an amount to be proved at trial;
- C. Award Honeywell its reasonable attorney's fees and other costs of prosecuting this action; and
- D. Grant Honeywell such other relief as the Court deems just.

**COUNT IV – BREACH OF CONTRACT FOR FAILURE TO REMEDIATE
(against Mestek and Formtek)**

71. Honeywell incorporates by reference and realleges paragraphs 1 through 70 as paragraph 71.

72. Mestek and Formtek are liable to Honeywell for all obligations of Met-Coil's and Lockformer's under the Indemnity Agreement. Pursuant to the Indemnity Agreement, Mestek and Formtek, as successors, parents and affiliated companies of Lockformer and Met-Coil, are and were obligated to and responsible for the due diligent investigation and remediation of the Lockformer Facility.

73. Under the Indemnity Agreement, Honeywell agreed to pay Lockformer \$800,000 in two phases. Honeywell paid Lockformer \$400,000 upon execution of the Indemnity Agreement. To obtain the second payment of \$400,000, Lockformer was to obtain a clean-up letter from the Illinois EPA under Section 4(y) of the Illinois Environmental Protection Act or certify that it had used the first \$400,000 exclusively for environmental investigation and remediation of the Lockformer Facility. (Exhibit A at pp. 4-5.)

74. Lockformer sent a letter to Honeywell on or about October 22, 1998 certifying that Lockformer had indeed expended and used the first \$400,000 "exclusively for investigation and remediation of the property." James Heitt, Lockformer's President, signed the letter, which was also notarized. Honeywell then paid the second \$400,000 to Lockformer.

75. In fact, Lockformer did not use the first \$400,000 exclusively for investigation and remediation of the Lockformer Facility. Instead, Lockformer used a significant portion of the first \$400,000 to operate its business and even attempted to book a significant portion as profits, thereby defrauding Honeywell. Lockformer's outside auditors forced Lockformer to reverse that transaction, which Lockformer then did.

76. Pursuant to the Indemnity Agreement, Lockformer agreed to use the second \$400,000 exclusively to investigate and remediate the Lockformer Facility as well. (Exhibit A at pp. 6-7.)

77. In fact, Lockformer did not use the second \$400,000 exclusively for investigation and remediation of the Lockformer Facility. Instead, Lockformer used a significant portion of the second \$400,000 to operate its business.

78. Had Lockformer used the money paid to it by Honeywell under the Indemnity Agreement as Lockformer had agreed to do, Lockformer would have investigated and remediated the Lockformer Facility in the mid-1990s and would or might have prevented the spread of contamination at the Lockformer Facility. Such action would have reduced the potential liability of Lockformer, Met-Coil, Mestek and Honeywell in the Lockformer Actions.

79. By refusing to use the \$800,000 in settlement proceeds exclusively for investigation and remediation of the Lockformer Facility, Lockformer and Met-Coil have breached the Indemnity Agreement with Honeywell. Mestek and Formtek are liable for this breach.

80. Honeywell has been damaged by Mestek's and Formtek's breach of the Indemnity Agreement. As a result of their breach, Honeywell faces increased potential liability in the Lockformer Actions.

Wherefore, Honeywell respectfully requests that this Court:

- A. Enter judgment in Honeywell's favor on Count IV of this Complaint;
- B. Award Honeywell damages in an amount to be proved at trial;
- C. Award Honeywell its reasonable attorney's fees and other costs of prosecuting this action; and

D. Grant Honeywell such other relief as the Court deems just.

JURY DEMAND

Honeywell demands trial by jury pursuant to 735 ILCS 5/2-1105.

Respectfully submitted,

HONEYWELL INTERNATIONAL INC.

By: Leo P. Dombrowski
One of Its Attorneys

Dated: September 9, 2003

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SETTLEMENT, RELEASE AND INDEMNITY AGREEMENT

This Settlement, Release and Indemnity Agreement ("Agreement") is entered into between The Lockformer Company ("Lockformer"), its parent, Met-Coil Systems Corporation ("Met-Coil"), and AlliedSignal Inc. ("AlliedSignal") as of the date executed by all parties hereto.

Recitals

WHEREAS, Lockformer filed a lawsuit against AlliedSignal on March 31, 1993, in the United States District Court for the Northern District of Illinois, Eastern Division, entitled The Lockformer Company v. AlliedSignal Inc., No. 93 C 1934 ("the Lawsuit") alleging, inter alia, that AlliedSignal is liable to Lockformer for investigation and remediation costs relating to alleged contamination of soil and groundwater at Lockformer's property at 711 Ogden Avenue, Lisle, Illinois ("the Property").

WHEREAS, AlliedSignal has answered the complaint in the Lawsuit and has denied all liability, and continues to deny all liability;

WHEREAS, Lockformer, Met-Coil and AlliedSignal have engaged in settlement negotiations and now desire to settle and compromise all disputes and all claims arising out of the lawsuit and all claims between AlliedSignal and Lockformer, that Lockformer and/or Met-Coil had, have, or may have in the future, against AlliedSignal, which relate to the Property.

Definitions

AlliedSignal: As used in this Agreement, the term "AlliedSignal" shall mean AlliedSignal Inc. and Baron-Blakeslee, Inc., and their parents, subsidiaries, affiliated

EXHIBIT

A

companies, predecessors, successors and assigns, joint ventures, and all of their employees, agents, consultants, insurers, attorneys, officers and directors.

Lockformer: As used in this Agreement, the term "Lockformer" shall mean The Lockformer Company, and its parents, subsidiaries, affiliated companies, predecessors, successors, assigns and joint ventures.

Met-Coil: As used in this Agreement, the term "Met-Coil" shall mean Met-Coil Systems Corporation and its parents, subsidiaries, affiliated companies, predecessors, successors, assigns and joint ventures.

Agreement

NOW, THEREFORE, in consideration of the above recitals and covenants and promises of Lockformer, Met-Coil and AlliedSignal, as set forth herein, the parties agree as follows:

A. Lockformer and Met-Coil, and their respective officers, directors, shareholders, and employees hereby and forever release, acquit and discharge AlliedSignal from all claims, demands, damages, expenses, costs, attorneys' fees, actions and liabilities of any kind and nature, known or unknown, past, present or future, for or because of any matter or thing done or omitted, alleged to have been done or omitted, or suffered to be done or omitted by AlliedSignal and related to the following: any and all transactions, events or claims alleged in the complaint or

pleadings on file in the Lawsuit; any and all claims of first party insurance benefits (whether or not subrogated); any and all claims, including but not limited to personal injury and property damage, arising out of or related to the sale, use, delivery, repair or replacement of any TCE storage tank or related stand pipes; the sale, delivery, use or disposal of trichloroethylene ("TCE") or components containing TCE at the Property; any and all soil, air, water, or groundwater contamination or impact, personal injury, property damage, business interruption or lost business of any kind caused or related to, or alleged to have been caused or related to TCE, or any other compounds containing TCE.

B. Lockformer and Met-Coil agree to defend, hold harmless, and indemnify AlliedSignal from all claims, demands, damages, expenses, costs, attorneys' fees, actions and liabilities of any kind and nature, whether known or unknown, past, present, or future, whether threatened or brought by any person or entity, private, governmental, or otherwise regardless of whether any such claims, demands, damages, expenses, costs, attorneys' fees, actions, or liabilities arise from, purport to arise from, or are caused by, negligence, alleged negligence, strict liability, alleged strict liability, or other act or omission on the part of AlliedSignal, (including but, not limited to, the sole, joint or concurrent negligence, acts or omissions of AlliedSignal) that have been or may be brought against AlliedSignal by any person or entity seeking compensation for damages or other relief from AlliedSignal, as a result of any and all transactions, events or claims alleged

in the complaint and pleadings in the Lawsuit; any and all claims, including but not limited to personal injury and property damage, arising out of or related to the sale, use, repair, delivery or disposal of any storage tank and related equipment; the sale, delivery, use, storage, removal or disposal of any TCE or compounds containing TCE; and/or any and all soil, air, water or groundwater contamination or impact, personal injury, property damage, business interruption or lost business, caused by or related to, or alleged to have been caused by or related to TCE.

C. Upon execution of this Agreement, AlliedSignal agrees to pay \$400,000 ("Payment") to Lockformer. AlliedSignal also agrees to arrange for an irrevocable standby letter of credit (issued by a bank acceptable to Lockformer, such acceptance not to be unreasonably withheld) to the order of Lockformer, to issue in the amount of \$400,000 ("Letter of Credit") to guarantee AlliedSignal's obligation under Section D below. Such Letter of Credit may provide that it shall be automatically extended for additional periods each of one (1) year from its present or any future expiration date, unless at least sixty (60) calendar days prior to the then relevant expiration date the issuing bank notifies Lockformer that it has elected not to renew the Letter of Credit. In the event such notice of non-renewal is given, AlliedSignal shall obtain a new Letter of Credit issued by a bank acceptable to Lockformer (such acceptance not to be unreasonably withheld) unless at such time AlliedSignal's obligation under Section D below shall have been satisfied.

D. At any time, Lockformer may present AlliedSignal with a "Second Payment Letter" which may be either: 1. a letter bearing the notarized signature of the chief executive officer of Lockformer representing that the Payment has been expended and used exclusively for investigation and remediation of the Property or; 2. a Section 4(y) letter from the IEPA averring that the remediation of the Property is complete. Within ten (10) business days of the receipt of the Second Payment Letter, AlliedSignal will pay to Lockformer \$400,000 (the "Second Payment"). Within ten (10) business days of making the Second Payment to Lockformer, AlliedSignal will pay to Lockformer an amount equal to interest on \$400,000, calculated at the commercial paper rate for high grade unsecured notes thirty (30) days, less one (1) percent, as published by The Wall Street Journal on the date of execution of this Agreement, for the period which elapsed between the Payment and the Second Payment.

1. Lockformer will send copies of the Second Payment Letter to the following:

- a) General Counsel
AlliedSignal Inc.
Box 2245R
Morristown, NJ 07962-2245
- b) Carolyn J. Horn
Assistant General Counsel
AlliedSignal Inc.
Box 2245R
Morristown, NJ 07962-2245
- c) Robert L. Shuftan, Esq.
Wildman, Harrold, Allen & Dixon
225 W. Wacker Drive
Chicago, IL 60606-1229

d) H. Roderic Heard, Esq.
Wildman, Harrold, Allen & Dixon
225 W. Wacker Drive
Chicago, IL 60606-1229

E. Should AlliedSignal refuse or fail to pay the Second Payment to Lockformer within ten (10) business days of receipt of the Second Payment Letter, Lockformer shall be entitled to draw upon the Letter of Credit. Lockformer's sole pre-condition for payment under the Letter of Credit shall be the presentment of a letter bearing the notarized signature of the chief executive officer of Lockformer and stating that Lockformer has presented the Second Payment Letter to AlliedSignal and that AlliedSignal has not paid the Second Payment to Lockformer within ten (10) business days after its receipt of the Second Payment Letter. Should payment under the Letter of Credit be required, within ten (10) business days after payment under the Letter of Credit, AlliedSignal will pay to Lockformer an amount equal to the interest on \$400,000, at the commercial paper rate for high grade, unsecured notes, thirty (30) days less one (1) percent, as published by The Wall Street Journal on the date of execution of this Agreement, for the period elapsed between the Payment and Lockformer's drawing upon the Letter of Credit.

F. As a condition for AlliedSignal's performance, Lockformer agrees to use the Payment and to the extent necessary, the Second Payment (or the proceeds from the Letter of Credit, as the case may be) solely to investigate and remediate the Property until Lockformer secures a Section 4(y) letter from the IEPA or expends

fully the Payment and Second Payment attempting to secure the Section 4(y) letter. Lockformer further agrees to:

1. Submit the Property to the IEPA and participate in cleanup of the Property through the IEPA Pre-Notice Site Program, and
2. Diligently investigate and remediate the Property, as necessary, to qualify for a Section 4(y) letter from IEPA.

G. Lockformer and AlliedSignal agree to execute a stipulation for dismissal with prejudice of the Lawsuit, with each party to bear its own costs and fees.

H. Lockformer and AlliedSignal agree to request that the court retain jurisdiction over the Lawsuit for the purposes of enforcing this Agreement. If the court is unwilling to retain jurisdiction (and dismisses the case with leave to reinstate), either party may petition the court to enforce this Agreement, after providing notice to all counsel presently of record.

I. Lockformer will provide AlliedSignal with access to all publicly available files and all correspondence and submissions to or documents received from IEPA and submissions to IEPA and responses from IEPA related to the Property.

J. Lockformer will immediately provide AlliedSignal with a copy of any Section 4(y) letter upon receipt from the IEPA.

K. Lockformer, Met-Coil and AlliedSignal shall keep the terms of this Agreement confidential and shall not disclose or divulge this Agreement or its terms to any person or entity other than the

parties to this action or their attorneys. This shall not prevent disclosure to Lockformer's, Met-Coil's or AlliedSignal's owners, agents, accountants or potential purchasers or any governmental agency as may be necessary in the ordinary course of AlliedSignal's, Met-Coil's or Lockformer's business.

L. Lockformer and Met-Coil further agree that they will not assist any private person or private entity that is currently pursuing, or that may pursue, any claims, demands, or actions against AlliedSignal. This provision shall not impair any legal obligation of Lockformer to respond to any court ordered discovery seeking information about this Lawsuit, its settlement or any of the underlying facts. In the event that Lockformer or Met-Coil is served with any discovery request related to the Lawsuit or this Agreement, Lockformer or Met-Coil shall provide written notice to AlliedSignal at Box 2245R, Morristown, NJ 07962-2245, Attention: Carolyn Horn, Assistant General Counsel, prior to the filing of any response or production of documents.

M. Lockformer will stipulate with AlliedSignal to a finding by the court of nonliability of AlliedSignal under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") 42 U.S.C. § 9607.

N. Lockformer, Met-Coil and AlliedSignal hereby agree to the special considerations which follow:

1. Any obligation to pay any losses, damages, attorneys' fees, costs or expenses incurred or to be incurred by Lockformer is denied by

AlliedSignal, and this final compromise and settlement hereof shall not be treated as an admission of liability or responsibility by AlliedSignal at any time for any purpose, such liability having been and continuing to be expressly denied by AlliedSignal.

2. This Agreement may be executed in one or more counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which taken together shall constitute one in the same instrument.
3. This Agreement is entered into for the express benefit of Lockformer, Met-Coil and AlliedSignal and is not intended and shall not be deemed to create any rights or interests whatsoever in any third person, including without limitation, any right to enforce the terms hereof.
4. Each provision of this Agreement shall be interpreted in a manner as to be valid and enforceable under applicable law, but if any provision hereof shall be or become prohibited or invalid under any applicable law, that provision shall be ineffective only to the extent of such prohibition or invalidity without thereby invalidating the remainder of that provision or any other provision hereof.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.
6. AlliedSignal, Lockformer and Met-Coil hereby expressly agree to waive any and all provisions of the Illinois Anti-Indemnity Act, 740 ILCS 35/1, which are or may be applicable to this Agreement.
7. This Agreement constitutes the entire agreement by and among the parties hereto and integrates and supersedes all prior understandings or agreements with respect to its subject matter, including but not limited to "Terms For Settlement Agreement: Lockformer/AlliedSignal Litigation" dated October 12, 1994.
8. This Agreement may not be altered, amended, modified or otherwise changed except in writing, duly executed by authorized representatives of all the parties hereto.
9. Each party executing this Agreement represents that it has been represented by counsel of its own choosing regarding the preparation and negotiation of this Agreement and all matters and claims set forth herein and that each of them has read this Agreement and is fully aware of the contents hereof and its legal effect.
10. If any dispute should arise with respect to this

Agreement, the prevailing party in any ensuing litigation or controversy shall be entitled to all costs of enforcement including reasonable attorneys' fees.

O. Within thirty days of the execution of this Agreement by the parties, AlliedSignal and Lockformer will file with the court a stipulation to dismiss, proposed finding of nonliability and request for dismissal with prejudice of the Lawsuit, each side to bear its own costs and attorneys' fees.

IN WITNESS HEREOF, this Agreement is executed and agreed to by the following, as of the last date set forth below.

AGREED AND ACCEPTED:

Dated: December _____, 1994

THE LOCKFORMER COMPANY

Dated: December _____, 1994

MET-COIL SYSTEMS CORPORATION

Dated: December 8, 1994

Paul M. Gath

ALLIEDSIGNAL INC.

Agreement, the prevailing party in any ensuing litigation or controversy shall be entitled to all costs of enforcement including reasonable attorneys' fees.

O. Within thirty days of the execution of this Agreement by the parties, AlliedSignal and Lockformer will file with the court a stipulation to dismiss, proposed finding of nonliability and request for dismissal with prejudice of the Lawsuit, each side to bear its own costs and attorneys' fees.

IN WITNESS HEREOF, this Agreement is executed and agreed to by the following, as of the last date set forth below.

AGREED AND ACCEPTED:

Dated: December 6, 1994

J. John Del Vecchio
THE LOCKFORMER COMPANY
PRESIDENT

Dated: December 6, 1994

J. John Del Vecchio
MET-COIL SYSTEMS CORPORATION
V.P. PRESIDENT

Dated: December , 1994

ALLIEDSIGNAL INC.