

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

In re: MET-COIL SYSTEMS CORP., : **Chapter 11**
:
Debtor. : **Case No. 03-12676 (MFW)**
:
: **Committee Objection Date: 10/13/03 @ 4:00 pm**
: **Hearing Date: 10/20 @ 3:00 pm**

**LIMITED OBJECTION OF THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS TO THE DEBTOR'S MOTION PURSUANT TO 11
U.S.C. §§ 105(A) AND 365(A) AUTHORIZING THE DEBTOR TO ASSUME THE
DEBTOR'S EMPLOYMENT AGREEMENT WITH CHARLES F. KUONI**

The Official Committee of Unsecured Creditors of Met-Coil Systems Corp., by and through its counsel designate, Klehr, Harrison, Harvey, Branzburg & Ellers, LLP, respectfully submits this limited objection to the Debtor's motion pursuant to 11 U.S.C. §§ 105(A) and 365(A) authorizing the Debtor to assume the Debtor's Employment Agreement with Charles F. Kuoni (the "Motion") and in support of this limited objection, the Committee represents as follows:

1. On or about August 26, 2003 (the "Petition Date"), Met-Coil Systems Corp. (the "Debtor") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business as a Debtor-in-Possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case.

2. On or about September 7, 2003, the United States Trustee appointed the Committee. The Committee has retained Klehr, Harrison, Harvey, Branzburg & Ellers, LLP, subject to approval by this Court, as its counsel.

3. On August 27, 2003, the day after these cases were filed, the Debtor filed the Motion seeking to assume an Employment Agreement (the "Employment Contract") between the

Debtor and Charles F. Kuoni (“Kuoni”), the Debtor’s chief executive officer. The Employment Contract is attached as Exhibit A to the Motion and reveals that the Debtor and Kuoni entered into the agreement on August 11, 2003, approximately two weeks before the Petition Date.

4. The Employment Contract provides the following compensation structure to Kuoni:

a. A base salary of \$360,000 to be paid in accordance with the Debtor’s normal payroll periods.

b. A signing bonus of \$35,000.

c. A performance bonus of \$280,000 upon the Debtor’s confirmation of a plan of reorganization with acceptance by all classes of creditors and interest holders.

d. Severance pay of three months base salary for a “no cause” termination.

5. To the best of the Committee’s knowledge, the signing bonus was paid pre-petition and Kuoni has continued to receive his annual salary in accordance with the Employment Contract since the Petition Date.

6. The Committee does not object to base salary and termination provisions in the Employment Contract. With respect to the performance bonus, however, at this stage of the Debtor’s chapter 11 proceeding, the Committee is not able to assess whether the bonus offered to Kuoni is reasonable under the circumstances. As a result, the Committee objects to setting any performance bonus until there is a clear picture of the outcome of this case.

7. Section 365(a) of the Bankruptcy Code provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." *In re Joseph C. Speiss Co.*, 145 B.R. 597, 601 (Bankr. N.D. Ill. 1992). The assumption or rejection of an executory contract or unexpired lease by a debtor is subject to review under the

"business judgment" standard. *See In re Del Grosso*, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990). The Court should only approve the Motion if the assumption is within the Debtor's reasonable business judgment. *See, e.g., NLRB v. Bildisco and Bildisco*, 465 U.S. 513, 523 (1984).

8. At this stage of this case, the Debtor has not and cannot demonstrate why the assumption of Kuoni's performance bonus is consistent with the Debtor's reasonable business judgment. Quite simply, the Debtor does not know what the ultimate outcome of this case will be or whether the outcome is favorable enough to justify payment of the performance bonus.

9. While the Committee is hopeful that a favorable recovery will be achieved for unsecured creditors in this case, thus justifying Kuoni's bonus, it is too early in this case to decide whether the bonus is fair or reasonable. Until the landscape of the Debtor's reorganization is fully known and understood, it is premature to allow the Debtor to assume Kuoni's employment contract. Even within the context of a fully supported plan, a number of disparate outcomes are possible, some of which may not justify the payment of any bonus.

10. The Committee has asserted this objection as a limited objection. The Committee does not object to Kuoni receiving the base salary provided for in the employment contract for his post-petition services and the termination pay if his employment contract is terminated by the Debtor under the circumstances provided in the contract. Under these circumstances, the Committee believes that a decision on the assumption of the agreement should be deferred until such time as the Debtor's reorganization prospects are clear or that the Court allow assumption of all provisions of the contract except for the performance bonus and reset consideration of the performance bonus for a later date.

WHEREFORE, The Official Committee of Unsecured Creditors of Met-Coil Systems Corp. respectfully request that this limited objection be sustained and that an order be entered

consistent with the relief sought by the Committee in this Motion, together with such other and further relief as the Court deems just and proper.

KLEHR, HARRISON, HARVEY,
BRANZBURG & ELLERS, LLP

/s/ Richard M. Beck
Joanne B. Wills (ID#2357)
Richard M. Beck (ID#3370)
919 Market Street – Suite 1000
Wilmington, DE 18901-3062
(302) 426-1189

Attorneys Designate for the
Official Committee of Unsecured Creditors