

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
)  
MET-COIL SYSTEMS CORPORATION, ) Case No.: 03-12676 (PJW)  
)  
Debtor. ) Jointly Administered

**REPORT OF THE DEBTOR CONCERNING  
PRELIMINARY EVALUATION OF RECLAMATION CLAIMS**

The above-captioned debtor and debtor in possession (the “Debtor”), by and through its undersigned counsel, hereby submits this Report Concerning Preliminary Evaluation of Reclamation Claims (the “Report”), pursuant to the Order Establishing Procedures For Treatment Of Valid Reclamation Claims (D.I. 200) (the “Reclamation Order”) dated October 20, 2003, and states as follows with respect thereto:

**STATUS OF THE CASE AND JURISDICTION**

1. On August 26, 2003 (the “Petition Date”), the Debtor commenced this case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.
2. The Debtor has continued in possession of its properties and has continued to operate and manage its business as a debtor in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.
3. No trustee or examiner has been appointed in this case. On or about September 11, 2003, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors.

## **DEBTOR'S REPORT CONCERNING RECLAMATION CLAIMS**

4. On October 20, 2003, this Court entered the Reclamation Order (a copy of which is attached hereto as Exhibit A and incorporated herein by reference), which sets forth procedures and requirements for determining the amount and validity of reclamation claims in this case. One requirement of the Reclamation Order was that the Debtor file an initial statement listing those reclamation claims it believes are correctly asserted, the holders of such claims, and the amount of such claims, within thirty (30) business days of the Reclamation Order. This Report is intended to fulfill that requirement.

5. This Report is filed solely for the purpose of determining the value of reclamation claims that have been correctly asserted against the Debtor. As described in this Report, additional determinations must be made prior to the final valuation of such claims. **In addition, pursuant to the Reclamation Order, payment on account of reclamation claims will not be made until such time as administrative claims in general are paid in this case, which will likely be at the time of confirmation of the Debtor's Plan of Reorganization.**

## **CONTENTS AND METHODOLOGY USED IN PREPARING THIS REPORT**

6. The Debtor received reclamation claims from approximately seven (7) vendors. The Debtor established and followed detailed procedures to both reconcile the claims to the Debtor's records and determine the validity of the claims in accordance with the Bankruptcy Code and other applicable law.

7. Based on the information contained in the initial reclamation demand and in the supporting documentation provided by the reclamation claimants and/or their counsel, the Debtor reconciled the claims received to the Debtor's books and records. In particular, this reconciliation process involved several discrete analyses by the Debtor and/or its professionals of a given claim, including;

a. Whether the claimant was able to identify the goods it claimed to have shipped to the Debtor that are the subject of the reclamation claims.<sup>1</sup>

b. Whether the Debtor had paid the reclaiming seller for the goods in which a reclamation claim was asserted, either (i) prior to the Petition Date, (ii) because the goods were received after the Petition Date, or (iii) pursuant to an order of this Court authorizing payment of certain prepetition obligations.

c. Whether the reclamation claim was asserted on a timely basis;

d. Whether the Debtor had the goods in which a reclamation claim was asserted on hand as of the time of the reclamation demand;<sup>2</sup>

e. Whether the amount of the goods as set forth in the Reclamation Claim conforms to the amount of such goods as reflected in the Debtor's books and records; and

f. Other relevant facts.

8. Attached to this Report as Exhibit B is an overview of the reclamation claims received by the Debtor by amount. In addition, attached to this Report as Exhibit C is a comprehensive listing of all reclamation claims received by the Debtor. Exhibit C additionally sets forth the Debtor's analysis with respect to the amount of each party's reclamation claim that has been correctly asserted. The Debtor has listed the amount of each claim it believes to be correctly asserted in the column captioned "Net Reclamation Claim."

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<sup>1</sup> A reclaiming seller bears the burden of identifying the goods in which it asserts a reclamation right at the time a reclamation demand is made. See Matter of Continental Airlines, Inc., 125 B.R. 415, 417 (Bankr. D. Del. 1991).

<sup>2</sup> A reclaiming seller must prove that a debtor possessed the goods at the time the debtor received the reclamation demand. See, e.g., In re Adventist Living Ctrs., Inc., 52 F.3d 159, 163 (7th Cir. 1995); Matter of Flagstaff Foodservice Corp., 14 B.R. 462, 469 (Bankr. S.D.N.Y. 1981).

## TREATMENT OF RECLAMATION CLAIMS

9. The Debtor hereby reserves the right to object in the future to those reclamation claims set forth on Exhibit C under applicable law. In particular, at least two critical determinations remain to be made before the reclamation claims can be allowed:

a. Determinations as to the Debtor's insolvency, and the claimant's knowledge thereof, as of the date the goods were delivered to the Debtor have not yet been made. See Matter of Continental Airlines, Inc., 125 B.R. 415, 417 (Bankr. D. Del. 1991) (debtor must be insolvent as of the date goods are delivered in order to sustain valid reclamation claim; additionally, reclaiming seller required to present evidence of insolvency); In re Video King of Illinois, Inc., 100 B.R. 1008, 1013 n.6 ("Section 2-702 of the U.C.C. also requires that a seller not know of the buyer's insolvency at the time of delivery").

b. Determination has not yet been made as to whether the Debtor will have preference or other actions against certain of the parties that have asserted reclamation claims that might affect the value and/or allowance of those claims. See 11 U.S.C. § 502(d) (providing that claims of entities from whom property is recoverable by a debtor shall be disallowed unless the entity has turned such property over to the debtor).

10. In addition, further review of the Debtor's books and records, and/or subsequent events in these cases, may result in the Debtor's determining that certain claims listed on Exhibit C have been paid prior to the time for payment of reclamation claims generally in this chapter 11 case. The Debtor expressly reserves the right to object to any reclamation claim that it determines has been paid prior to such distribution on account of reclamation claims generally.

11. The Debtor respectfully submits that determinations as to the issues in paragraphs 9 and 10 may require significant expenditures of time and resources on the part of the

Debtor and any reclamation claimants affected. Moreover, it is certain that such determinations will be made during the course of this chapter 11 case in connection with the negotiation and formation of a plan of reorganization and the administration and evaluation of claims generally. Accordingly, the Debtor proposes to defer such determinations until these issues can be better evaluated and addressed in the context of plan formation and claims administration. In the interim, however, the attached statement identifies those claims that the Debtor believes have been correctly asserted under applicable law, subject to the determinations set forth above.

**PROCEDURE FOR RECONSIDERING DEBTOR'S  
CLASSIFICATION OF RECLAMATION CLAIMS**

12. In the event that a party listed on Exhibit C hereto wishes to contest the Debtor's determination as to the correctly-asserted amount of its reclamation claim, that party *must, within ten (10) days from the date of this Report*, submit an objection concerning its reclamation claim, as provided for in the Reclamation Order. Such objection must be in writing and specific as to the factual nature and legal basis for any dispute. In addition, such objection must be sent to the following parties:

i. Co-Counsel to the Debtor: Eric D. Schwartz, Esquire, Morris, Nichols, Arsht & Tunnell, 1201 N. Market Street, Wilmington, DE 19801 and Kathryn Pamerter, Esquire, Goldberg, Kohn, Bell, Black, Rosenbloom & Moritz, Ltd., 55 East Monroe Street, Suite 3700, Chicago, Illinois 60603.

ii. United States Trustee: Margaret L. Harrison, Esquire, Office of the United States Trustee, J. Caleb Boggs Federal Bldg., 844 King Street, Suite 2207, Wilmington, DE 19801.

iii. Counsel to the Official Committee of Unsecured Creditors: Joanne

B. Wills, Esquire, Klehr, Harrison, Harvey, Branzburg & Ellers LLP, 919 Market Street, Suite 1000, Wilmington, Delaware 19809.

13. Following the receipt of an objection, the Debtor will promptly request a hearing on such objection, and the Court's decision shall govern such Reclamation Claim.

14. The procedures described herein are set forth in more detail on pages 1-3 of the Reclamation Order. A copy of the Reclamation Order is attached hereto as Exhibit A.

Statements of Dispute should not be sent to anyone other than the parties specified in paragraph 12 above.

Dated: November 19, 2003

MORRIS, NICHOLS, ARSHT & TUNNELL

By: /s/ James C. Carignan

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