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.	)	**Objection Deadline: Dec 26, 2003 @ 4:00 (EST)** **Hearing Date: January 7, 2004, 2:00 p.m.**
	)	

DEBTOR'S OBJECTION TO PROOF OF CLAIM
NUMBER 225 FILED BY HONEYWELL INTERNATIONAL, INC.

Met-Coil Systems Corporation, debtor and debtor in possession in the above-captioned case (the "**Debtor**"), hereby submits its objection (the "**Objection**") pursuant to §§ 502(b) and (e) of title 11 of the United States Code (the "**Bankruptcy Code**") and Rules 3001 and 3007 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") to proof of claim number 225 filed by Honeywell International, Inc. (the "**Honeywell Claim**"). In support of its Objection, the Debtor states as follows:

Introduction

1. On August 26, 2003 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor is operating its business as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

2. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. § 157(b)(2).

3. The statutory predicates for the relief sought herein are §§ 502(b) and (e) of the Bankruptcy Code and Bankruptcy Rules 3001 and 3007.

The Honeywell Claim

4. On November 14, 2003, Honeywell International, Inc. ("**Honeywell**") filed the Honeywell Claim as a general unsecured claim in an unliquidated amount. The Honeywell Claim is a claim for contractual indemnification and reimbursement arising from a Settlement, Release and Indemnity Agreement (the "**Indemnity Agreement**") dated December 8, 2004 between AlliedSignal, Inc. ("**AlliedSignal**") and the Lockformer Company ("**Lockformer**").[1] AlliedSignal is a corporate predecessor of Honeywell, and Lockformer currently is one of the Debtor's operating divisions. A copy of the Indemnity Agreement is appended to the Honeywell Claim as Exhibit B.

5. In 1991, Lockformer discovered a concentration of trichloroethylene ("**TCE**") near the fill pipe for the TCE storage tank at its facility in Lisle, Illinois. AlliedSignal had supplied Met-Coil with TCE and allegedly spilled TCE during its periodic deliveries of the chemical to Met-Coil. In 1993, Met-Coil initiated an action against AlliedSignal seeking recovery of investigation and remediation costs relating to the alleged spills of TCE. In settlement of that suit, the parties entered into the Indemnity Agreement. Under the Indemnity Agreement, AlliedSignal paid Lockformer $400,000 and agreed to pay (and later did pay) Lockformer an additional $400,000 if Lockformer's cost of investigation and remediation exceeded $400,000. In exchange Met-Coil agreed to, "defend, hold harmless, and indemnify AlliedSignal from all claims, demands, damages, expenses, costs, attorneys' fees, actions and liabilities of any kind and nature" including those "brought by

[1] In its proof of claim, Honeywell makes gratuitous allegations concerning the liability under the Indemnity Agreement of entities that are neither parties to the Indemnity Agreement nor debtors in this case. Since they have nothing to do with the allowability of the Honeywell Claim, the Debtor will not respond to those allegations, except to generally deny that any other entity is liable under the Indemnity Agreement.

any person or entity, private, governmental or otherwise" for any "act or omission on the part of AlliedSignal."

6. Thereafter, a series of property and personal injury actions were brought against, among others, Met-Coil and Honeywell (as AlliedSignal's successor) relating to the alleged release of TCE at the Lisle facility. Pursuant to the Indemnity Agreement, Met-Coil paid Honeywell prior to the Petition Date in excess of $1.9 million of defense costs and expenses incurred by Honeywell in those actions.

7. The Honeywell Claim alleges additional "indemnification claims" arising under the Indemnity Agreement in an amount "not less than" $4,672,243.20. Honeywell's indemnification claims fall into three categories:

(a) The first category consists of Honeywell's contingent obligations under an agreement (the '**Settlement Agreement**," a copy of which is attached to the Honeywell Claim as Exhibit C) to settle two lawsuits in which both Honeywell and the Debtor are defendants alleged to be jointly and severally liable for damages caused by the alleged migration of TCE from the Lisle facility. Under that Settlement Agreement, Honeywell has "contingent" obligations to pay $2,400,000 to settle a class action for property damages entitled Mejdrech, et al. v. The Lockformer Company, et al., and $1,200,000 to settle an individual personal injury action entitled Schreiber v. The Lockformer Company, et al. Both actions are pending in the United States District Court for the Northern District of Illinois (the '**Illinois District Court**"). As the Settlement Agreement states, both settlements are "contingent" on the confirmation of a plan of reorganization in Met-Coil's bankruptcy case containing specified terms, and the Mejdrech settlement is also contingent on approval by the

Illinois District Court. (This category of claims is hereinafter referred to as the "**Contingent Settlement Obligations**.")

(b) The second category of claims included in the Honeywell Claim consists of "an aggregate of $1,072,243 for unreimbursed defense costs incurred to date in the Environmental Litigation." (Honeywell Claim at ¶7.) Those costs are not otherwise identified and are not supported by any documents. Also, there is no breakdown between costs allegedly incurred before the Petition Date, and costs incurred thereafter. (This category is hereinafter referred to as the "**Unreimbursed Defense Costs**.")

(c) The third category consists of "a claim for costs and expenses incurred both before and after the Filing Date . . . . [that] cannot, at this time, be reasonably calculated or estimated . . . ." (Honeywell Claim at ¶8.) (This category is hereinafter referred to as the "**Unknown Costs**.")

Relief Requested

8. By this Objection, the Debtor requests that this Court disallow and expunge the Honeywell Claim in its entirety pursuant to §§ 502(b) and 502(e) of the Bankruptcy Code and Bankruptcy Rules 3001 and 3007.

Basis for Relief

A. The Claim for the Amount of the Contingent Settlement Obligations Must be Disallowed Under Section 502(e).

9. Section 502(e)(1)(B) of the Bankruptcy Code provides, in pertinent part:

> (e)(1) Notwithstanding subsections (a), (b) and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to extent that –
>
> > (B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution.

11 U.S.C. § 502(e)(1)(B). A claim must be disallowed under § 502(e)(1)(B) if three criteria are satisfied: first, the claim is contingent; second, the claim is for contribution or reimbursement; and third, the claimant is co-liable with the debtor with respect to the claim. In re Pinnacle Brands, Inc., 259 B.R. 46, 55 (Bankr. D. Del. 2001) (Walrath J.) (citing In re Dant & Russell, Inc., 951 F.2d 246, 248 (9th Cir. 1991)). The legislative history behind § 502 states that the section "requires disallowance of the claim for reimbursement or contribution of a co-debtor, surety or guarantor of an obligation of the debtor, unless the claim of the creditor on such obligation has been paid in full." H.R. Rep. No. 95-595, 1st Sess. at 353-355 (1977), U.S.Code Cong. & Admin.News 1978, pp. 6308-6311.

10. Applying the Pinnacle Brands three-part test to the Contingent Settlement Obligations part of the Honeywell Claim: the settlement obligations, by their terms, are contingent, and have not been paid; "[c]laims for reimbursement include indemnity claims," 4 Collier on Bankruptcy, §502.06 [2][a] (15th ed. rev. 1999); and the settlements are of claims for which the Debtor and Honeywell are alleged to be jointly liable for the same damages. Therefore, Honeywell's claim for reimbursement of the Contingent Settlement Obligations must be disallowed.

11. First, Honeywell's claim is contingent. "The primary example of a contingent claim in this context is 'when a co-debtor has not paid the creditor and [thereby]

established his right to payment from the debtor'". In re MEI Diversified, Inc., 106 F.3d 829, 832 (8th Cir. 1997) (citing In re A & H, Inc., 122 B.R. 84, 86 (Bankr. W.D. Wis. 1990)). "A claim for reimbursement or contribution under Section 502(e) is contingent, and not allowable, except to the extent that the surety or co-debtor has actually paid the underlying claim." A & H, Inc., 122 B.R. at 86; In re Early & Daniel Indus., Inc., 104 B.R. 963, 967 (Bankr. S.D. Ind. 1989). Here, Honeywell does not allege that it has paid any amounts under the Settlement Agreement. Indeed, Honeywell's obligations under the Settlement Agreement are expressly contingent:

> These settlements are contingent upon confirmation of the Plan of Reorganization (the "Plan") in the pending bankruptcy case of Met-Coil Systems Corporation (containing the settlement provisions, including the settlement amounts specified in Paragraph 1 of the August 29, 2003 letter agreement between my clients and Mestek and Met-Coil). . . . In the event the Plan is not confirmed, either party may terminate this agreement, and in such event all parties retain all rights, claims and defenses existing prior to the execution of this agreement. Plaintiffs' settlement with Honeywell of the Mejdrech case is also contingent on Rule 23 court approval by Judge Leinenweber. (Honeywell Claim at Exh. C.)

12. Second, Honeywell's claim for the amounts of the Contingent Settlement Obligations is a claim for reimbursement or contribution. Honeywell's Claim is based entirely on the Indemnity Agreement. Under the terms of the Indemnity Agreement, Met-Coil is required to "indemnify" Honeywell from all "claims, demands, damages, expenses, costs, attorneys' fees, actions and liabilities of any kind and nature." "'A claim for indemnity is a claim for reimbursement,' and thus fits within § 502(e)(1)(B)." A & H, Inc., 122 B.R. at 87 (citing In re Charter Co., 81 B.R. 644, 648 (M.D. Fla. 1987) aff'd, 862 F.2d 1500 (11th Cir. 1989)); see also 4 Collier, supra. Here, the Honeywell Claim, by its own

terms, is a claim for indemnification under the Indemnity Agreement, and thus a claim for "reimbursement" within the meaning of § 502(e)(1)(B).

13. Third, Honeywell is co-liable with the Debtor on the underlying claims of the environmental claimants for which Honeywell seeks indemnification. In determining whether a creditor is an entity "liable with the debtor," the court in Matter of Baldwin-United Corp., 55 B.R. 885, 890 (Bankr. S.D. Ohio 1985), stated that the phrase "is broad enough to encompass any type of liability shared with the debtor, whatever its basis." See A & H, Inc., 122 B.R. at 86. In In re Isaac, No. 90-0150, 1990 WL 68875 at *2 (E.D. Pa. May 21, 1990), the court said that:

> [I]n determining whether an entity is liable with the Debtor as used in [§ 502(e)(1)(B)], the proper standard is whether the causes of action in the underlying action assert claims upon which, if proven, the Debtor could be held liable but for the automatic stay. Even when a creditor . . . ascribes various names or titles to its claims, but each is essentially for reimbursement for moneys to be expended by the creditor, the creditor's claims fall within the scope of disallowance of § 502(e).

Here, Honeywell seeks indemnification and reimbursement for claims for which the Debtor is also alleged to be liable. The plaintiffs in the Schreiber and Mejdrech actions sued the Debtor and Honeywell jointly for the same damages. For purposes of § 502(e), Honeywell is "liable with the debtor."

14. Where a surety or co-debtor seeks indemnity from the debtor, the claim will be disallowed unless the surety or co-debtor has paid the obligation upon which it is seeking reimbursement. Greatamerican Fed. Sav. & Loan Ass'n v. Adcock Excavating, Inc., No. 89-3794, 1990 WL 51219 (N.D. Ill. Apr. 17, 1990). Honeywell seeks indemnification from the Debtor but has not paid the obligations upon which it seeks reimbursement.

Accordingly, its claim for indemnification of the amounts of the Contingent Settlement Obligations must be disallowed under § 502(e)(1)(B).

B. The Claim for Unreimbursed Defense Costs Must be Disallowed Under § 502(b) and Bankruptcy Rule 3001.

15. Section 502(b) of the Bankruptcy Code authorizes the court to allow claims determined "as of the date of the filing of the petition . . . ." Bankruptcy Rule 3001(a) requires that a proof of claim "conform substantially to the appropriate Official Form," which is Form 10. Both Form 10 and the form on which the Honeywell Claim is filed require a statement of the amount claimed "at Time Case Filed." They also require the claimant to attach supporting documents, including statements and invoices, or, if those documents are voluminous, a summary.

16. Honeywell attached no documents whatsoever to support its claim for more than $1 million of alleged "defense costs." It says that the documents exist but are voluminous, yet it failed to attach a summary to its proof of claim. For that reason alone, the claim for Unreimbursed Defense Costs must be disallowed.

17. Moreover, in its proof of claim, Honeywell alleges that the amount it seeks is for Unreimbursable Defense Costs "incurred to date," suggesting that its claim includes amounts incurred post-petition. Honeywell has failed to specify what part of its claim is for pre-petition amounts, as required by the Official Form. A post-petition claim cannot be allowed under § 502(b).

18. Because the Honeywell Claim does not comply with Bankruptcy Rule 3001 and does not state sufficient facts to support the claim, it is not entitled to evidentiary effect under Bankruptcy Rule 3001(f). In re Allegheny International, Inc., 954

167, 173 (3rd Cir. 1992); Pinnacle Brands, 259 B.R. at 50. Honeywell has also failed to state which part of its claim for Unreimbursed Defense Costs is pre-petition and which is post-petition. Accordingly, Honeywell's claim for Unreimbursed Defense Costs should be disallowed in its entirety.

C. The Claim for Unknown Costs Must be Disallowed Under § 502(b) and Bankruptcy Rule 3001.

19. The objections to Honeywell's claim for Unreimbursed Defense Costs apply equally to its vague claim for Unknown Costs. The November 14th general bar date established by this Court for the filing of pre-petition proofs of claim allowed Honeywell more than 12 weeks from the Petition Date to figure out what it thinks the Debtor owes it. To the extent Honeywell has not made a claim for pre-petition debts, it is now too late. Honeywell's effort to "reserve its right to amend and supplement this proof of claim" is unavailing if it has no such right in the first place. It does not have a right to amend or supplement its proof of claim unless and until this Court grants that right for good cause on an appropriate motion. In the meantime, the claim for Unknown Costs should be disallowed.

Notice

20. Notice of this Objection has been given to (a) the Office of the United States Trustee for the District of Delaware; (b) counsel for the Debtor's postpetition secured lender; (c) the Committee; (d) the United States Environmental Protection Agency; (e) the Attorney General of the State of Illinois; (f) the DuPage County State's Attorney; (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, (h) those parties requesting notice pursuant to Rule 2002

of the Federal Rules of Bankruptcy Procedure; (i) the TCE Trust Legal Representative; and (j) counsel for Honeywell. The Debtor submits that no other or further notice need be given.

21. 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 this Court enter an order disallowing and expunging the Honeywell Claim in its entirety.

Dated: November 24, 2003

MORRIS, NICHOLS, ARSHT & TUNNELL

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