

**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: January 13, 2004 at 4:00 p.m.
)	Hearing Date: January 20, 2004 at 10:30 a.m.
)	

**MOTION OF NEW ENGLAND H.V.A./C. SERVICES,
CORPORATION FOR RELIEF FROM THE AUTOMATIC STAY**

New England H.V.A./C. Services, Corporation (“New England”), by and through undersigned counsel, hereby files this Motion (the “Motion”) pursuant to sections 105 and 362(d) of chapter 11 title 11 of the United States Code (the “Bankruptcy Code”) for relief from the automatic stay to allow New England to proceed with its lawsuit against debtor Met-Coil Systems Corporation (the “Debtor”) and liquidate its claim in the Superior Court for the State of New Jersey. In support of the Motion, New England respectfully states as follows:

Jurisdiction, Venue and Statutory Predicates

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334(b). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G).
2. Venue of this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought herein are 11 U.S.C. §§ 362 and 105(a).
4. The Motion is filed pursuant to Fed. R. Bank. Proc. 4001(a) and 9014.

Factual Background

5. New England is engaged in the business of installing, repairing, replacing, and maintaining heating, ventilation and air conditioning system and related services.

6. On or about July 30, 1997, New England purchased certain equipment, known as the Vulcan Plasma Cutter (“VCP”), based on representations made by defendants to the Action (defined below) that the Vulcan Plasma Cutter would meet New England’s sheet metal cutting needs.

7. Upon receiving the VCP and for the five years thereafter, New England has attempted to correct numerous problems with the VCP to no avail.

8. On July 11, 2003, New England filed suit in Superior Court of New Jersey in Hudson County against certain non-debtor parties and the Debtor (Docket No. HUD-L-2592-03) (the “Action”) setting forth causes of action including claims for breach of contract, breach of express warranty, breach of implied warranties, and breach of implied warranty of fitness for a particular purpose. A copy of the complaint (the “Complaint”) filed in the Action is attached hereto as Exhibit A.

9. On August 26, 2003, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

10. On October 30, 2003, the Honorable Camille M. Kenny entered an order (the “Superior Court Order”) in the Action which sets forth procedures to be filed pending the Debtor’s bankruptcy case, including the filing of a stay relief motion with this Court. A copy of the Superior Court Order is attached hereto as Exhibit B. Accordingly, New England has filed this Motion.

Relief Requested

11. By this Motion, New England seeks the entry of an order granting it relief from the automatic stay, which would permit New England to pursue the Action against the Debtor.

Basis for Relief Requested

12. Section 362(d)(1) of the Bankruptcy code provides that:

A court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay --

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest.

11 U.S.C. § 362(d)(1).

13. Section 362(d)(1) leaves “courts to consider what constitutes cause based on the totality of the circumstances in each particular case.” In re Wilson, 116 F.3d 87, 90 (3d Cir. 1997) citing In re Trident Assocs., 52 F.3d 127 (6th Cir. 1995).

14. The Bankruptcy Code does not define “cause” and it must therefore be “determined on a case-by-case basis.” Izzarelli v. Rexene Products Co. (In re Rexene Products Co.), 141 B.R. 574, 576 (Bankr. D. Del. 1992); Matter of Pursuit Athletic Footwear, Inc., 193 B.R. 713, 718 (Bankr. D. Del. 1996); In re Wedgewood, 878 F.2d 693, 697 (3d Cir. 1989); In re Pro Football Weekly, Inc., 60 B.R. 824, 826 (N.D. Ill. 1986).

15. The following three-factor test has been adopted in order to determine whether “cause” exists under § 362(d)(1):

(1) Whether any great prejudice to either the bankrupt estate or the debtor will result;

(2) Whether the hardship to the non-bankrupt party by maintenance of the stay considerably outweighs the hardship to the debtor; and

(3) Whether the creditor has a probability of prevailing on the merits.

Rexene, 141 B.R. at 576. See In re Integrated Health Servs., Inc., No. 00-389-MWF, 2000 Bankr. LEXIS 1319, at *5 (Bankr. D. Del. Aug. 11, 2000).

16. The totality of the circumstances present in this case constitute sufficient “cause” to warrant relief from the automatic stay under § 362(d)(1) of the Bankruptcy Code.

17. First, New England’s claim must be liquidated. The prejudice in not granting New England relief from the automatic stay greatly outweighs the prejudice to the Debtor. The automatic stay operates to stay the entire Action; indeed the Debtor is a critical party to the Action. As set forth in the Superior Court Order, if New England does not obtain relief from the automatic stay, the Action will be dismissed against the Debtor and New England will be delayed in liquidating its claims. In addition, delay may ultimately impair New England’s ability to obtain relief, not only against the Debtor, but also the non-debtor defendants.

18. New England estimates its ongoing damages due to the defects of the VCP to be \$750 per day. The equipment sold by the Debtor to New England is the only equipment New England has to cut sheet metal, an integral part of New England’s business. Until New England is compensated for its losses, it cannot replace or repair the equipment. Continued delay in liquidating its claim against the Debtor will result in

greater damage to New England, and greater liability to the bankrupt estate. This would greatly mitigate damages to New England, and consequently any claim against the debtor's estate. Requiring New England to wait until the Debtor is discharged from bankruptcy causes New England to suffer immense hardship.

19. Finally, New England is confident that it will prevail in the Action. The Complaint, attached hereto, sets forth in detail the history of defects and the non-action and inadequate remedies on the part of the defendants to correct such defects. New England maintains that it has valid and legitimate claims in the Action.

WHEREFORE, New England respectfully requests that this Court enter an order in the form of order attached to this Motion which lifts the automatic stay to allow New England to pursue the action against the Debtor, and grant such other relief as is just and proper.

Dated: November 28, 2003
Wilmington, Delaware

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