

**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: Feb. 10, 2004 - 4:00 p.m. (EST)
)	Hearing Date: Feb. 17, 2004 - 10:30 a.m. (EST)

**DEBTOR'S MOTION TO APPROVE 2004 SETTLEMENT AGREEMENT
PURSUANT TO BANKRUPTCY CODE § 105 AND BANKRUPTCY RULE 9019**

Met-Coil Systems Corporation, as debtor and debtor in possession (the "**Debtor**"), hereby moves this Court (the "**Motion to Approve**") for entry of an order approving that certain letter agreement (the "**2004 Settlement Agreement**") by and among the Debtor, Mestek, Inc. ("**Mestek**"), and Travelers Casualty and Surety Company, The Travelers Indemnity Company, The Travelers Indemnity Company of Illinois n/k/a Travelers Property Casualty Company of America and Gulf Insurance Company (collectively, "**Travelers**", and together with the Debtor and Mestek, the "**Parties**") pursuant to Section 105 of the United States Bankruptcy Code (the "**Bankruptcy Code**") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"). In support of the Motion to Approve, the Debtor respectfully states as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. Consideration of this Motion to Approve is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. The predicates for the relief requested herein are Section 105 of the Bankruptcy Code and Bankruptcy Rule 9019.

INTRODUCTION

3. On August 26, 2003 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. The Debtor is operating its business as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors (the "**Committee**") has been appointed.

5. The Debtor has been involved in several lawsuits over the alleged release of trichloroethylene ("**TCE**") into the soil at its facility in Lisle, Illinois (the "**Lisle Facility**"). The Lisle Facility is operated by one of the Debtor's operating divisions, The Lockformer Company ("**Lockformer**").

6. On February 21, 2001, the Debtor and Mestek instituted a lawsuit against, among others, Travelers in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois, Chancery Division entitled Met-Coil Systems Corporation v. Columbia Casualty Company (Case No. 01 MR 000116) (the "**Illinois Lawsuit**").¹ In the Illinois Lawsuit, Travelers filed a motion to enforce the First Settlement Agreement (as defined below). After commencement of the Debtor's Chapter 11 case, the Illinois Lawsuit was removed to the United States District Court for the Northern District of Illinois and thereafter was referred to the United States Bankruptcy Court for the Northern District of Illinois, which transferred venue to Delaware. The Illinois Lawsuit is currently pending as a

¹ Travelers were named parties to the Coverage Lawsuit through an amended complaint filed on June 14, 2002.

case before the United States District Court for the District of Delaware (Case No. 03-1167).

Travelers also have filed a motion to remand the case.

7. There is nearly identical litigation pending in Iowa. On October 14, 2003, the Debtor removed the action that Travelers filed against the Debtor, Mestek and Lockformer in state court to the United States District Court for the Northern District of Iowa (Case No. LACVO45117) (the "**Iowa Lawsuit**"). On November 5, 2003, Travelers filed a motion for referral of the case to the United States Bankruptcy Court for the Northern District of Iowa which is still pending. Additionally, Travelers filed a motion to remand the Iowa Lawsuit.

8. Further, on October 20, 2003, the Debtor filed its Motion To Assume Settlement Agreement Or In The Alternative To Approve Settlement Agreement Pursuant To Bankruptcy Rule 9019 Filed By Met-Coil Systems Corporation (the "**Motion to Assume**"). Through the Motion to Assume, the Debtor sought the assumption or, in the alternative, the approval of that certain Confidentiality Settlement Agreement and Release (the "**First Settlement Agreement**") among Met-Coil, Travelers and Gulf (as those terms are defined therein). A dispute exists as to Mestek's indemnification obligation, if any, under the First Settlement Agreement.

9. Through the Illinois Lawsuit, the Iowa Lawsuit, the Motion to Assume and otherwise, the Debtor, along with Mestek, have alleged that Travelers are obligated under certain policies with Travelers to indemnify for or pay on behalf of the Debtor or Mestek amounts due for settlements, orders or judgments reached by or obtained against the Debtor and Mestek in various judicial or administrative claims that have been or may be commenced against one or all of them, as well as for the costs of defending the Debtor and

Mestek in connection with such claims. Travelers dispute that they have any such defense, indemnification or payment obligations.

10. The Parties desire to amicably resolve the Illinois Lawsuit, the Iowa Lawsuit and the Motion to Assume as well as any disputes among them with regard to the Travelers Policies and the Gulf Policies (as those terms are defined in the First Settlement Agreement).

11. To avoid the costs of litigating this matter, the Parties have agreed to settle the issues among them as set forth in the 2004 Settlement Agreement, a copy of which is attached hereto as Exhibit A. Contemporaneously herewith, the Debtor filed its Motion for Leave to File Under Seal Exhibit A To Its Motion To Approve 2004 Settlement Agreement Pursuant to Bankruptcy Code § 105 and Bankruptcy Rule 9019 ("**Motion to File Under Seal**"). As provided for in the 2004 Settlement Agreement, the Debtor will be providing a copy of the 2004 Settlement Agreement to the Committee, the future claimants' representative and the United States Trustee, provided that those parties have entered into appropriate agreements to maintain the confidentiality of the 2004 Settlement Agreement.

12. Confidentiality is mandated in a situation such as this as the Debtor, Travelers and Mestek could be injured by the release of the terms of the 2004 Settlement Agreement -- the Debtor because it continues to negotiate further settlements and the release of these settlement terms may hamper that process, and Travelers because it may jeopardize their ability to negotiate with other insureds in similar cases. Such a confidentiality requirement also comports with the applicable standard in the insurance industry.

13. Without disclosing the confidential terms, the 2004 Settlement Agreement provides for Travelers to make a cash payment to the Debtor in consideration for

which Travelers are to receive the benefits of the release, discharge and so-called TCE Channeling Injunction provisions as set forth in the plan of reorganization proposed by the Debtor and Mestek, as co-proponents. The effectiveness of the 2004 Settlement Agreement is conditioned upon, among other things, entry of a confirmation order containing specific protective language in the TCE Channeling Injunction provision of the plan.

RELIEF REQUESTED

14. By this Motion to Approve, the Debtor seeks entry of an order pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rule 9019 authorizing it to enter into the 2004 Settlement Agreement.

15. Section 105(a) of the Bankruptcy Code provides that "[t]he court may issue any order ... that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105. Providing the Debtor with the authority to enter into the 2004 Settlement Agreement is clearly beneficial to the Debtor's estate and its creditors, as it provides funds to the Debtor's estate for distributions to its creditors through the plan of reorganization that it has proposed jointly with Mestek, and at the same time, resolves several claims of and against the Debtor's estate.

16. Bankruptcy Rule 9019 provides, in pertinent part, that, "on motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019. Under this authority, the Third Circuit has emphasized that "to minimize litigation and expedite the administration of a bankruptcy estate, '[c]ompromises are favored in bankruptcy.'" Myers v. Martin (In re Martin), 91 F.3d 389, 393 (3d Cir. 1996) (quoting 9 Collier on Bankruptcy ¶ 9019.03[1] (15th ed. 1993)). In addition, this District has recognized that the approval of a proposed compromise and

settlement is committed to the sound discretion of the bankruptcy court. See In re Louise's, Inc., 211 B.R. 798, 801 (D. Del. 1997).

17. Before approving a settlement under Bankruptcy Rule 9019, a court must determine whether "the compromise is fair, reasonable, and in the interest of the estate." In re Marvel Entertainment Group, Inc., 222 B.R. 243, 249 (D. Del. 1998) (quoting Louise's, 211 B.R. at 801). To reach such a determination, the court must assess the value of the claim that is being settled and balance it against the value to the estate of the approval of the settlement. Martin, 91 F.3d at 393. In striking the balance, a court should consider four criteria: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." Martin, 91 F.3d at 392; see also Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968).

18. Generally, a bankruptcy court should defer to the debtor's judgment so long as there is a legitimate business justification for entering into the settlement. Martin, 91 at 395; see also TMT Trailer Ferry, 390 U.S. at 424-25 (basic to the process of evaluating proposed settlements is "the need to compare the terms of the compromise with the likely rewards of litigation"). Under TMT Trailer Ferry, the Court is not required to hold a full evidentiary hearing before a compromise can be approved; rather, the Court's obligation is "to canvass the issues and see whether the settlement 'falls below the lowest point in a range of reasonableness.'" 10 Collier on Bankruptcy ¶ 9019.02, 9019-4 to 9019-5 (15th ed.) (quoting In re Drexel Burnham Lambert Group, Inc., 134 B.R. 493 (Bankr. S.D.N.Y. 1991))

(quoting Cosoff v. Rodman (In re W.T. Grant Co.), 699 F.2d 599, 608 (2d Cir.), cert. denied, 464 U.S. 822 (1983))).

19. Applying the standard set forth in Martin and TMT Trailer Ferry, this Court should approve the 2004 Settlement Agreement. First, as with all litigation, the outcome of the Illinois Lawsuit, the Iowa Lawsuit and the Motion to Assume are not certain and success is not guaranteed. Second, the Illinois Lawsuit, the Iowa Lawsuit and the Motion to Assume involve several complex issues that could take many years and hundreds of thousands of dollars to resolve. Third, the Debtor has determined in its sound and reasonable business judgment that its creditors will benefit from the 2004 Settlement Agreement because the settlement will bring a contribution to the estate, and eliminate the expenses that the Debtor would be required to incur to litigate the matters at issue. Fourth, the 2004 Settlement Agreement represents a fair and equitable result to all parties in interest of the disputes at issue.

20. The 2004 Settlement Agreement is the result of good faith negotiations among the Parties, and the resultant settlement is in the best interests of the Debtor's creditors and estate, in its reasonable business judgment. It will also provide a portion of the funding for the Debtor's plan of reorganization, including funding for known and future TCE personal injury claims. Accordingly, the 2004 Settlement Agreement should be approved.

NOTICE

21. Notice of this Motion to Approve has been given to (a) the Office of the United States Trustee for the District of Delaware; (b) counsel for the Debtor's secured lender; (c) counsel for the Committee; (d) counsel for Travelers; (e) counsel for the future

claimants' representative and (f) all parties that have requested notice of pleadings pursuant to Bankruptcy Rule 2002.²

NO PRIOR REQUEST

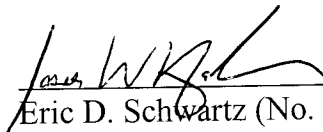
22. No previous request for the relief sought in this Motion to Approve has been made to this Court or any other court.

² Contemporaneously herewith, the Debtor filed its Motion to Limit Notice with Respect to Debtor's Motions (1) To Approve 2004 Settlement Agreement with Travelers Pursuant to Bankruptcy Code § 105 and Bankruptcy Rule 9019 and (2) For Leave to File *Under Seal Exhibit A* To Its Motion to Approve 2004 Settlement Agreement Pursuant to Bankruptcy Code § 105 and Bankruptcy Rule 9019 which is incorporated herein by reference.

WHEREFORE, the Debtor respectfully requests the Court enter an order: (a) approving the 2004 Settlement Agreement pursuant to Bankruptcy Code § 105 and Bankruptcy Rule 9019; and (b) granting such other and further relief as is just and proper.

Dated: January 28, 2004

MORRIS, NICHOLS, ARSHT & TUNNELL



Eric D. Schwartz (No. 3134)
Jason W. Harbour (No. 4176)
1201 N. Market Street
P.O. Box 1347
Wilmington, Delaware 19899-1347
Telephone: (302) 658-9020
Facsimile: (302) 658-3989

GOLDBERG, KOHN, BELL, BLACK,
ROSENBLOOM & MORITZ, LTD.
Ronald Barliant (Illinois ARDC# 0112984)
Kathryn A. Pamenter (Illinois ARDC# 6231191)
55 East Monroe Street, Suite 3700
Chicago, Illinois 60603
Telephone: (312) 201-4000
Facsimile: (312) 332-2196

Counsel to Met-Coil Systems Corporation,
Debtor and Debtor in Possession