

**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 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 Confidential Settlement Agreement (the "**Settlement Agreement**") by and among the Debtor, Mestek, Inc. ("**Mestek**"), Formtek, Inc. ("**Formtek**") and New Hampshire Insurance Company, National Union Fire Insurance Company of Pittsburgh, PA, and any other insurance company affiliated with American International Group (the "**AIG Related Insurers**"), and together with the Debtor, Mestek and Formtek, 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 § 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, certain of the AIG Related Insurers 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 "**Coverage Lawsuit**").¹ After commencement of the Debtor's Chapter 11 case, the Coverage 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 Coverage Lawsuit is currently pending as

¹ The AIG Related Insurers were named parties to the Coverage Lawsuit through an amended complaint filed on June 14, 2002.

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

7. Through the Coverage Lawsuit and otherwise, the Debtor, along with Formtek and Mestek, have alleged that the AIG Related Insurers are obligated under certain policies with the AIG Related Insurers to indemnify for or pay on behalf of the Debtor, Formtek or Mestek amounts due for settlements, orders or judgments reached by or obtained against the Debtor, Formtek 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, Formtek and Mestek in connection with such claims. The AIG Related Insurers dispute that they have any such defense, indemnification or payment obligations.

8. The Parties desire to amicably resolve the Coverage Lawsuit and any disputes among them with regard to the Coverage Lawsuit or the Policies (as defined in the Settlement Agreement).

9. To avoid the costs of litigating this matter, the Parties have agreed to settle the issues among them as set forth in the Settlement Agreement, a copy of which is attached hereto as Exhibit A. Contemporaneously herewith, the Debtor filed its Motion for Leave Pursuant To Bankruptcy Code § 107 and Bankruptcy Rule 9018 To File Exhibit A To Its Motion To Approve Settlement Agreement Pursuant to Bankruptcy Code § 105 and Bankruptcy Rule 9019 *Under Seal* ("**Motion to File Under Seal**"). As provided for in the Settlement Agreement, the Debtor will be providing a copy of the Settlement Agreement to the Committee, the future claimants' representative and the United States Trustee, provided that those parties have entered into appropriate confidentiality agreements under the circumstances of the respective third party.

10. Confidentiality is mandated in a situation such as this where the Parties to the Settlement Agreement could be injured by the release of the terms of the Settlement Agreement -- the Debtor because it continues to negotiate further settlements and the release of these settlement terms may hamper that process, and the AIG Related Insurers 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. The Parties acknowledge that it is in their best interests for the Settlement Agreement to be filed *under seal*.

11. Without disclosing the confidential terms, the Settlement Agreement provides for the AIG Related Insurers to make a cash payment to the Debtor in consideration for which the AIG Related Insurers on the one hand and the Debtor, Mestek and Formtek on the other agreed to a mutual release with regard to the Coverage Lawsuit and the Policies, and the AIG Related Insurers are to receive the benefits of the release, discharge and the 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 Settlement Agreement is conditioned upon, among other things, entry of a final non-appealable confirmation order in form satisfactory to the Debtor, Mestek and the AIG Related Insurers which contains, among other things, conclusions of law with regard to the AIG Related Insurers' participation in and benefits of the TCE Channeling Injunction.

RELIEF REQUESTED

12. By this Motion, 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 Settlement Agreement.

13. 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 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.

14. 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).

15. 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).

16. 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 F.3d 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))).

17. Applying the standard set forth in Martin and TMT Trailer Ferry, this Court should approve the Settlement Agreement. First, as with all litigation, the outcome of the Coverage Lawsuit is not certain and success is not guaranteed. This is especially true in this matter where the AIG Related Insurers have already disputed their coverage obligations. Second, the Coverage Lawsuit involves 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 Settlement Agreement because the settlement will bring a significant contribution to the estate, and

eliminate the expenses that the Debtor would be required to incur to continue to litigate the matters at issue. Fourth, the Settlement Agreement represents a fair and equitable result to all parties in interest of the disputes at issue.

18. The 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. It will also provide a portion of the funding for the Debtor's plan of reorganization, including funding for known and unknown, and present and future TCE personal injury claims. Accordingly, the Settlement Agreement should be approved.

NOTICE

19. 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 the AIG Related Insurers; (e) counsel for the future claimants' representative; and (f) all parties that have requested notice of pleadings pursuant to Bankruptcy Rule 2002.¹

NO PRIOR REQUEST

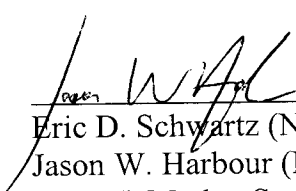
20. No previous request for the relief sought in this Motion to Approve has been made to this Court or any other court.

¹ Contemporaneously herewith, the Debtor filed its Motion to Limit Notice with Respect to Debtor's Motions (1) To Approve Settlement Agreement Pursuant to Bankruptcy Code § 105 and Bankruptcy Rule 9019 and (2) For Leave Pursuant to Bankruptcy Code § 107(b)(1) and Bankruptcy Rule 9018 to File Exhibit A To Its Motion to Approve Settlement Agreement Pursuant to Bankruptcy Code § 105 and Bankruptcy Rule 9019 *Under Seal* which is incorporated herein by reference.

WHEREFORE, the Debtor respectfully requests the Court enter an order: (a) approving the 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

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