

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re	)	
	)	<b>CHAPTER 11</b>
MET-COIL SYSTEMS	)	
CORPORATION,	)	
	)	
Debtor.	)	<b>CASE NO. 03-12676 (MFW)</b>

**RESPONSE OF THE ACE USA  
CLAIMANTS TO DEBTOR'S MOTION TO  
APPROVE 2004 SETTLEMENT AGREEMENT PURSUANT  
TO BANKRUPTCY CODE § 105 AND BANKRUPTCY RULE 9019**

The ACE USA Claimants,<sup>1</sup> by their attorneys, set forth their response to the Debtor's Motion to Approve 2004 Settlement Agreement Pursuant to Bankruptcy Code § 105 and Bankruptcy Rule 9019 (the "Motion"), as follows:

**Introduction**

1. Each of the ACE USA Claimants issued one or more insurance policies (the "Policies") to the Debtor. Some of the ACE USA Claimants have also entered into certain agreements (the "Agreements") with the Debtor in connection with the Policies. The Policies and the Agreements impose continuing duties and obligations on the Debtor. Under the Policies and Agreements, the ACE USA Claimants have various rights to payment on account of any unpaid premium payments, deductibles, self-insured retentions, claim service costs and fees, and other expenses and/or monetary obligations that may become due under the Policies and/or the Agreements. The ACE USA Claimants also have rights to receive other performance, and assert

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<sup>1</sup> The ACE USA Claimants include: Pacific Employers Insurance Company, Indemnity Insurance Company of North America, Westchester Fire Insurance Company and possibly other ACE USA-related companies.

defenses, setoffs and/or recoupments arising from, related to, or in connection with, the Policies and the Agreements. The ACE USA Claimants filed proofs of claim for contingent and unliquidated amounts against the Debtor for any and all claims arising out of, or in connection with, the Policies and the Agreements.

### **Response To Motion<sup>2</sup>**

2. The ACE USA Claimants have not had an opportunity to review the 2004 Settlement Agreement which has been filed under seal, or to determine how the terms thereof may affect any of the ACE USA Claimants' rights under any of their various Policies and the Agreements, or their interests in this bankruptcy case in general. Nevertheless, the ACE USA Claimants do not object to approval of the 2004 Settlement Agreement; *provided, however*, that any order approving the 2004 Settlement Agreement (the "Approval Order") must expressly indicate that neither the 2004 Settlement Agreement nor the Approval Order shall (i) have any effect on any of the ACE USA Claimants' rights, defenses, limitations and/or exclusions under any of the Policies and/or the Agreements; (ii) have any res judicata, collateral estoppel or any other preclusive effect on: (1) the ACE USA Claimants' rights to require full and complete exhaustion of any insurance coverage and/or duty to defend provided by the settling insurers under their respective insurance policies and (2) on any cause of action that the ACE USA Claimants might possess against Travelers, the Debtor, Mestek and/or Formtek (collectively, the "Settling Parties") arising out of the 2004 Settlement Agreement, including, but not limited to, the rights to seek contribution and/or subrogation from any of the Settling Parties; (iii) prejudice any of the ACE USA Claimants' rights to seek an adjudication of any issues relating to the rights and obligations of the parties, and the amount, nature and/or extent of insurance coverage, if any, under any of the Policies and/or the Agreements in any court of competent jurisdiction.

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<sup>2</sup> All capitalized terms not otherwise defined in this Response refer to those terms as defined in the Motion.

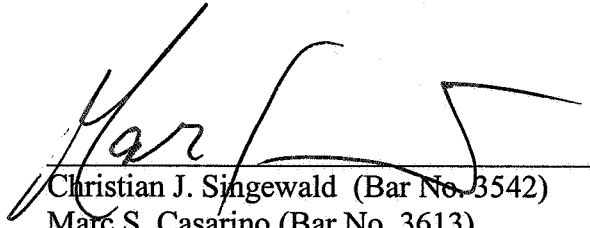
Moreover, the Approval Order must also explicitly provide that entry of the Approval Order does not in and of itself constitute a ruling or finding that this Court has core jurisdiction to adjudicate or interpret the parties' respective rights and obligations under the Policies and/or the Agreements, and that the Approval Order is being entered without prejudice to the ACE USA Claimants' rights to claim that this Court does not possess core jurisdiction to adjudicate or interpret the parties' respective rights and obligations under the Policies and/or the Agreements.

#### **Reservation of Rights**

4. Prior to the hearing on the Motion, the ACE USA Claimants will endeavor to negotiate acceptable terms of the Approval Order with the Settling Parties. In the event, however, that acceptable terms of the Approval Order cannot be agreed upon, the ACE USA Claimants reserve all of their rights to (i) seek an *in camera* review of the 2004 Settlement Agreement for, *inter alia*, a determination of the extent and manner in which the ACE USA Claimants' rights are being affected thereby; and (ii) object to approval of the 2004 Settlement Agreement on any grounds whatsoever. The ACE USA Claimants further reserve the right to amend, modify or supplement this Response in response to, or as a result of, any discovery that may be conducted and/or any other submission in connection with this bankruptcy case filed by any other party in interest. The ACE USA Claimants also reserve the right to adopt any other response to the Motion filed by any other party in interest.

WHEREFORE, the ACE USA Claimants have no objection to approval of the 2004 Settlement Agreement provided that the Approval Order contain the foregoing provisions in a form and substance acceptable to the ACE USA Claimants; and for such other and further relief as is just.

Dated: February 10, 2004



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**CERTIFICATE OF SERVICE**

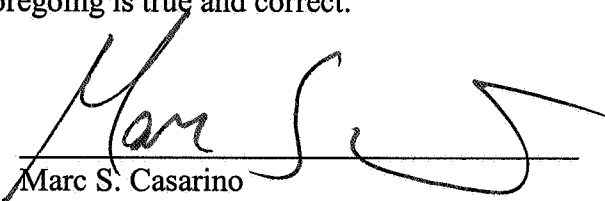
I, Marc S. Casarino, Esquire, certify that I am not less than 18 years of age, and that I caused service of Response of the ACE USA Claimants to Debtor's Motion to Approve 2004 Settlement Agreement Pursuant to Bankruptcy Code § 105 and Bankruptcy Rule 9019 to be made on February 10, 2004, on the following in the manner indicated:

VIA HAND DELIVERY  
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Chicago, IL 60603

Under penalty of perjury, I declare that the foregoing is true and correct.

Dated: February 10, 2004

  
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Marc S. Casarino