

**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.)	Hearing Date: To be determined

**MOTION FOR PROTECTIVE ORDER RELATED TO DISCOVERY
REQUESTS OF MEJDRECH PLAINTIFFS**

Professor Eric D. Green (the “Future Claimants’ Representative” or “FCR”), as the legal representative for Future Claimants in the above-captioned chapter 11 case, hereby files this motion seeking the entry of a protective order pursuant to Rule 7026(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) related to the subpoena issued by the Mejdrech Plaintiffs on February 27, 2004 (the “Discovery Requests”)¹. As set forth below, service of the subpoena was untimely and improper and the scope of the subpoena is not calculated to lead to admissible evidence. In support of this Motion, the FCR respectfully represents as follows:

Preliminary Statement

1. In their eleventh-hour Discovery Requests, the Mejdrech Plaintiffs seek (1) to require the FCR to produce every shred of paper relating to his work in this matter and (2) to require the FCR to appear at a deposition at 10:00 a.m. on March 2, 2004 to testify as to all communications the FCR has had with respect to the creation and funding of a trust (the “TCE Trust”).

¹ Copies of the Discovery Requests are annexed hereto collectively as Exhibit A.

2. The Discovery Requests were sent to the FCR and his counsel at approximately 5:22 p.m. on Friday, February 27, 2004, leaving one full business day for the FCR to respond. Moreover, the Discovery Requests were improperly served on the FCR by facsimile, in Boston, Massachusetts.²

3. Based upon the lack of adequate notice, numerous procedural defects in the issuance and service of the Discovery Requests and their onerous nature, the FCR has filed this Motion requesting that this Court disallow the Discovery Requests.

4. Notwithstanding these defects, the FCR, as a gesture of good faith, has agreed to appear for a deposition in Washington, D.C. on March 2, 2004, beginning at 10:00 a.m. and lasting for two hours, to address the subject matter of the Discovery Requests in general terms. Counsel for the FCR has informed plaintiffs' counsel that the FCR will not provide deposition testimony on the following topics: (1) the substance of the ongoing negotiations regarding the creation and funding of a TCE Trust, (2) confidential information provided to the FCR by Met-Coil or Mestek, and (3) the substance of any advice or analysis the FCR has received from his experts or his counsel. Professor Green's appearance at a deposition is an effort to help resolve the lift stay dispute between the Mejdrech Plaintiffs and the Debtor. Such appearance is not intended to lend credibility to a clearly improper subpoena. Moreover, subsequent to the agreed-to March 2, 2004 deposition, the Mejdrech Plaintiffs have sought to serve Professor Green with a "trial" subpoena for the March 8, 2004, hearing in this matter. Not only is the service of such further subpoena contrary to the spirit of goodwill in which Professor

² Service was also made on the FCR by overnight delivery.

Green agreed to appear at the deposition, it is in conflict with Local Bankruptcy Court Rule 4001-1(c) as, upon information and belief, the Court has not designated March 8 as a final, evidentiary hearing.

Argument

5. This Court should disallow the Discovery Requests, as the requests were improperly served, do not provide appropriate time for the FCR to respond, are unduly burdensome and broad, and seek discovery into privileged and/or confidential information.³ A protective order is appropriately granted where the moving party “show[s] good cause by demonstrating a particular need for protection.” Pansy v. Stroudsburg, 23 F.3d 772, 787 (3d Cir. 1994).

³ Bankruptcy Rule 7026, which incorporates Fed.R.Civ.P. 26(c)(1) – (4), provides, in pertinent part, that:

Upon motion by a party or by the person from whom discovery is sought, . . . the court in which the action is pending . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) that the disclosure or discovery not be had;
- (2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) . . . that the scope of the disclosure or discovery be limited to certain matters.

Fed. R. Bankr. P. 7026(c)(1) - (4).

A. The Discovery Requests propounded on the FCR were improperly served and failed to provide reasonable or sufficient notice.

6. Under Rule 30.1 of the Local Rules of Civil Practice and Procedure of the United States District Court for the District of Delaware, “‘reasonable notice’ for the taking of depositions under Fed. R. Civ. P. 30(b)(1) shall be not less than five days.” The Mejdrech Plaintiffs failed to give such notice. The only notice given occurred after 5:00 p.m. on Friday, February 27. On this ground alone, the subpoena is invalid and should be quashed. The Mejdrech Plaintiffs indicate that such short notice was necessary in light of the March 8, 2004 hearing on their Motion to Lift the Automatic Stay. However, the March 8 hearing was scheduled by the court on February 17, ten days prior to the Mejdrech Plaintiffs issuing the Discovery Requests.

7. Improper service of the subpoena is an additional basis why the subpoena should be quashed. Under Rule 45(b)(2) of the Federal Rules of Civil Procedure, made applicable in this proceeding by Fed.R.Bankr.P. 9016, “a subpoena may be served at any place within the district of the court by which it is issued, or at any place without the district that is within 100 miles of the place of deposition....” The subpoena served on the FCR, requiring him to appear in Wilmington, Delaware, was addressed to the FCR at his office in Boston, Massachusetts, over 300 miles from the place of deposition. A proper subpoena in this respect would issue from the United States Bankruptcy Court for the District of Massachusetts, not the United States Bankruptcy Court for the District of Delaware. Therefore, the subpoena is invalid.

B. The Discovery Requests propounded on the FCR are oppressive and unduly burdensome.

8. The scope of the Discovery Requests is manifestly oppressive and burdensome, as the document requests seek to compel production of all documents related to the

FCR's work in this case. Substantially all of the documents in the FCR's possession (1) are attorney-client communication or attorney work product, (2) were obtained by the FCR pursuant to a confidentiality agreement with the Debtor and Mestek, or (3) pertain to settlement negotiations among the parties, and are not admissible as evidence. A review of all of the FCR's documents would require the commitment of substantial resources and effort in order to properly respond. Presumably, since he had no relation to this matter prior to his appointment in the bankruptcy case, all of the non-privileged documents in the FCR's possession were received from either the Debtor or Mestek. Any such documents are more appropriately sought from the Debtor or Mestek. Given the burden that the FCR would have to bear in order to respond to the Discovery Requests, the FCR respectfully submits that a balancing of the burdens and benefits of such discovery weighs heavily in favor of the issuance of a protective order.

C. The Discovery Requests seek the production of the Debtor's and Mestek's documents that are in the possession of the FCR by virtue of a confidentiality agreement.

9. The FCR has only been provided access to certain documents from the Debtor and Mestek under the purview of a confidentiality agreement. Any request for these documents would more properly be made of the Debtor or of Mestek, as the FCR's disclosure of these documents would violate the confidentiality agreement.

10. Alternatively, the FCR requests that he be permitted to file under seal any such documents required to be disclosed, and that the Mejdrech Plaintiffs provide assurance that confidential treatment will be afforded to such documents.

D. The Discovery Requests seek the disclosure of material that is exempt from discovery or will not lead to the discovery of admissible evidence.

11. The Discovery Requests fail to satisfy the threshold requirement that all discovery be “reasonably calculated to lead to the discovery of admissible evidence.” Fed. R. Civ. P. 26(b)(1).

12. Other than the confidential information received from Met-Coil and Mestek, substantially all of the documents in the FCR’s possession are either attorney/client communications, or are subject to the attorney work product doctrine, and therefore are exempt from discovery. The bulk of the remainder of documents regarding communications with the Debtor or Mestek reflect settlement negotiations over funding of the TCE Trust.

13. The FCR respectively submits that the substance of settlement negotiations, which would not lead to the discovery of admissible evidence, should also be exempted from discovery in this matter. The Mejdrech Plaintiffs are seeking communications between the FCR, the Debtor, and Mestek, which implicate the negotiations concerning the funding of the TCE Trust. The Mejdrech Plaintiffs do not except such documents from discovery in their Discovery Requests, and it is not evident how such documents could reasonably lead to discovery of any admissible evidence. Particularly here, where settlement negotiations are ongoing between the parties over trust funding, it is essential that the court protect the confidential nature of those communications. Moreover, while the status of these negotiations may be relevant to the lift stay dispute between the plaintiffs and the Debtor, the substance of trust funding negotiations have very little, if any, relevance to such lift stay dispute.

14. Protection of the substance of settlement negotiations is necessary to foster and maintain the collaborative nature of settlement communications on an ongoing basis.

E. Efforts to amicably resolve issues concerning the Discovery Requests have not been successful.

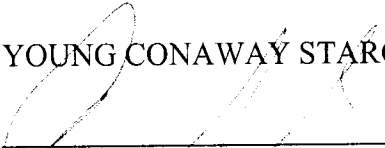
15. Counsel to the FCR has attempted to obtain the Mejdrech Plaintiffs' consent to withdraw the Discovery Requests, but no such affirmative consent was received. There appears to be no reasonable modification of the Discovery Requests that is acceptable to both parties. Accordingly, a motion for protective order became necessary. See attached certification.

Conclusion

16. For the foregoing reasons, Professor Eric D. Green respectfully requests that the Court disallow the Mejdrech Plaintiffs' Discovery Requests, or alternatively modify the scope, method, and timing of the Discovery Requests, and grant such other and further relief as this Court deems just and appropriate.

Dated: March 2, 2004

YOUNG CONAWAY STARGATT & TAYLOR, LLP



James L. Patton, Jr. (No. 2202)
Edwin J. Harroh (No. 3396)
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1000 West Street, 17th Floor
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(302) 571-6600

Attorneys for Eric D. Green, Legal Representative
for Future Claimants

EXHIBIT A

LANDIS RATH & COBB LLP

A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW

919 MARKET STREET, SUITE 600
P.O. BOX 2087
WILMINGTON, DELAWARE 19899

Daniel B. Rath
Direct Dial: 302.467.4420
Email: rath@lrclaw.com

Telephone: 302.467.4400
Facsimile: 302.467.4450

February 27, 2004

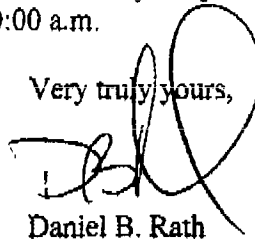
Eric D. Green
Resolutions, LLC
155 Federal Street
16th Floor
Boston, MA 02110

RE: Met-Coil Systems Corporation, Debtor
Case No. 03-12676 (MFW)

Dear Mr. Green:

Enclosed is a subpoena in the above matter requiring that you produce documents and attend a deposition on March 2, 2004 at 10:00 a.m.

Very truly yours,



Daniel B. Rath

DBR/mm
Enclosure

Cc: Edwin J. Harron, Esquire
Norman Berger, Esquire
Shawn M. Collins, Esquire

LANDIS RATH & COBB LLP

A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW

919 MARKET STREET, SUITE 600
P.O. BOX 2087
WILMINGTON, DELAWARE 19899

Daniel B. Rath
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Telephone: 302.467.4400
Facsimile: 302.467.4450

February 27, 2004

Edwin J. Harron, Esquire
Young Conaway Stargatt & Taylor LLP
1000 West Street
17th Floor
Wilmington, DE 19801

RE: Met-Coil Systems Corporation, Debtor
Case No. 03-12676 (MFW)

Dear Ed:

Enclosed is a subpoena for production of documents and deposition of Eric D. Green.

In light of the upcoming March 8 hearing on our Motion to Lift the Automatic Stay, we needed to move quickly to schedule the deposition. If a more convenient time between now and March 4 can be arranged by the parties, we would be happy to accommodate.

Very truly yours,



Daniel B. Rath

DBR/mm
Enclosure

Cc: Adam G. Landis, Esquire
Norman Berger, Esquire
Shawn M. Collins, Esquire
Ronald Barliant, Esquire
Scott Cousins, Esquire
Eric D. Schwartz, Esquire
Nancy Peterman, Esquire

United States Bankruptcy Court

FOR THE DISTRICT OF DELAWARE

IN RE:

Met-Coil Systems Corporation, Debtor.

SUBPOENA IN A CIVIL CASE

Case No.: 03-12676 (MFW)

To: Eric D. Green
Resolutions, LLC
155 Federal Street, 16th Floor
Boston, MA 02110

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY:

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.): **The Deponent must be prepared to testify regarding the creation and funding of the TCE Trust.**

PLACE OF DEPOSITION

DATE AND TIME

Landis Rath & Cobb LLP
919 Market Street, Suite 600
Wilmington, DE 19801

March 2, 2004 at 10:00 a.m.

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **The Deponent is requested to bring to the deposition the documents set forth on the attached Exhibit A.**

PLACE

Landis Rath & Cobb LLP
919 Market Street, Suite 600
Wilmington, DE 19801

DATE AND TIME

March 2, 2004 at 10:00 a.m.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.


PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify, Fed.R.Civ.P. 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (indicate if attorney for Plaintiff or Defendant)

DATE



, Attorney for Plaintiff

2/22/04

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Landis Rath & Cobb LLP, 919 Market Street, Suite 600, Wilmington, DE 19801
(302)467-4400

PROOF OF SERVICE

CAUSED TO BE SERVED:	DATE On February 27, 2004	PLACE At Boston, Massachusetts
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SERVED ON (PRINT NAME) Eric D. Green Resolutions, LLC 155 Federal Street, 16 th Floor Boston, MA 02110	MANNER OF SERVICE via Federal Express Priority Overnight Service
---	---

SERVED BY (PRINT NAME) Mary M. McAteer	TITLE Paralegal
---	--------------------

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 2-27-04
DATE

Mary M. McAteer
SIGNATURE OF SERVER

919 Market Street, Suite 600
Wilmington, DE 19801

ADDRESS OF SERVER

Rule 45, Fed.R.Civ.P., Parts (c) & (d):

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena requires disclosure of a trade secret or other confidential research, development, or commercial information, or (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Exhibit A

Documents requested:

All documents, in paper or electronic form (including drafts), relating to:

a) Eric D. Green's work as Court appointed Future Claims Representative and the funding of a TCE Trust as such term is defined in the Chapter 11 Plan of Reorganization Proposed by Met-Coil Systems Corporation and Mestek, Inc. ("Mestek") as Co-Proponents dated November 5, 2003 (the "Plan"), including without limitation communications between or among Eric D. Green, Debtor and/or Mestek;

**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.)	Docket Ref. No. _____

**ORDER FOR PROTECTIVE ORDER RELATED TO DISCOVERY
REQUESTS OF MEJDRECH PLAINTIFFS**

Upon consideration of the motion (the “Motion”)¹ of Professor Eric D. Green (the “Future Claimants’ Representative” or “FCR”), as the legal representative for Future Claimants, dated March 2, 2004, for protective order to disallow the Mejdrech Plaintiffs’ Discovery Requests, or alternatively modify the scope, method, and timing of the Discovery Requests, attached as Exhibit A to the Motion; and proper notice having been given; and it appearing that no other or further notice is necessary; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. The FCR is hereby authorized not to comply with the Discovery Requests.
3. The Court shall retain jurisdiction to construe and enforce this Order.

Dated: Wilmington, Delaware
_____, 2004

Mary F. Walrath
Chief United States Bankruptcy Court Judge

¹ Capitalized terms not otherwise defined shall have the meanings ascribed to them in the Motion.