IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
Met-Coil Systems Corporation,	)	No. 03-12676 (MFW)
Debtor.	)	**Hearing Date: March 8, 2004 at 12:30 p.m.** **Objection Deadline: March 3, 2004**

DEBTOR'S OBJECTION TO THE MOTION OF THE MEJDRECH CLASS TO MODIFY THE AUTOMATIC STAY (Re: D.I. 595)

Met-Coil Systems Corporation (the "Debtor"), debtor and debtor-in-possession in the above-captioned Chapter 11 case, hereby objects to the Motion to Modify the Automatic Stay (D.I. 595) (the "Motion") filed by Theresa Mejdrech, Daniel Mejdrech, Mary Beno and Mark Beno, individually and on behalf of all persons similarly situated (the "Movants" or the "Mejdrech Class"). In support of its objection, the Debtor respectfully states:

PRELIMINARY STATEMENT

Other than a short delay (and in a bankruptcy case all creditors are delayed), the Mejdrech Class will suffer no harm if the automatic stay remains in place. The Mejdrech Action[1] is about property damage, not personal injury. The Movants' references to Anne Schreiber (who is not a member of the Mejdrech Class and who has brought a separate action that is not the subject of the Motion) and cancer notwithstanding, the fact is that all of the plaintiffs in the Mejdrech Action are either connected to a municipal water supply or are receiving bottled water. See Declaration of Charles F. Kuoni, III, ¶ 13, a copy of which is attached hereto as Exhibit 1 ("Kuoni Declaration"), see also Exhibit B to Motion (Agreed Order

[1] Capitalized terms have the same meanings ascribed to them in the Motion.

providing for provision of bottled water). Any harm done to the value of their property would be the result of conduct that ceased long ago.

It is the Debtor that is at risk. The Mejdrech Action is a class action involving 1400 properties and complex issues of hydrology, real estate market valuation, migration modeling and analyses, water well and groundwater analysis, and contamination origination analysis, as well as sophisticated issues of law. To require the Debtor to try a case like that with less than two months' preparation would significantly interfere with the Debtor's reorganization efforts. The preparation for and trial of the Mejdrech Action would require significant attention and time of at least two key executives, and several of its attorneys (at enormous cost to the estate which would not be reimbursed by insurance), and put at risk a valuable asset of the estate, all at a critical turning point in this case – when the Debtor must either go forward with its existing plan or negotiate and draft a new one.

If it is not settled, the Movants' claim will have to be liquidated in the Illinois District Court. But now is not the time. Consistent with the purpose of the automatic stay, since filing its petition, the Debtor, its officers, directors and other key employees have focused their time, resources and efforts upon reorganizing while the Mejdrech Action and other lawsuits against the Debtor were stayed. Diverting the Debtor's attention to the Mejdrech Action now would defeat the purpose of the stay.

For the foregoing and the following reasons, the Motion should be denied, although the Debtor would not object to setting the matter for reconsideration at the June omnibus hearing.

BACKGROUND

1. The Debtor filed its petition under Chapter 11 on August 26, 2003 (the "Petition Date") in order to obtain relief from present and anticipated claims arising from alleged

environmental contamination from its plant in Lisle, Illinois, and to provide a systematic and fair distribution to creditors and future claimants. Apart from the environmental claims, the Debtor is a viable, profitable company.

2. The Mejdrech Action seeks damages for injury to property, consisting of diminution of value, under common-law tort theories and certain federal environmental statutes. There are over 1400 households included in the Mejdrech Class.

3. On August 29, 2003, the Debtor and the Mejdrech Class among others executed a letter agreement pursuant to which the Mejdrech Action was stayed as against Mestek and Honeywell for 150 days, and the Mejdrech Action would be settled for $12,500,000 if a plan were confirmed within those 150 days (i.e., by January 26, 2004). A plan was not confirmed. The Movants requested a trial date in the Mejdrech Action, and it is now scheduled for trial on April 19, 2004 as against Mestek and Honeywell. The Mejdrech Class seeks to have the trial proceed as against Met-Coil through their Motion.

LEGAL STANDARDS

4. A bankruptcy petition "operates as a stay, applicable to all entities," of the commencement or continuation of judicial proceedings against the debtor. 11 U.S.C. § 362(a)(1). The automatic stay is one of the most fundamental protections afforded a debtor under the Bankruptcy Code. H.R. Rep. No. 595, 95th Cong., 1st Sess. 340 (1977), reprinted in App. Pt. 4(d)9i) infra; S. Rep. No. 989, 95th Cong. 2d Sess. 54-55 (1978), reprinted in App. Pt. 4(e)(i) infra. The purpose of the stay is to provide the debtor with a breathing spell from creditors, to provide an orderly distribution of the debtor's assets, as well as to permit the debtor to reorganize. Id. "A debtor who seeks a fresh start is afforded a rehabilitation opportunity free from the financial pressures and problems which caused the debtor to seek relief under the Code." Norton Bankruptcy Law and Practice 2d, § 36:4.

5. In some instances, the automatic stay may be terminated or modified to permit litigation to continue outside of the bankruptcy court. Subsection (d) of § 362 provides:

> On request of a party in interest and after notice and a hearing, the court shall grant relief from the 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). Other than the lack of adequate protection, the Code does not provide examples of what constitutes "cause" for purposes of lifting the automatic stay. The legislative history, however, sheds some light on what might be "cause" to allow litigation to proceed in another forum:

> The lack of adequate protection of an interest in property of the party requesting relief from the stay is one cause for relief, but it is not the only cause. . . . [A] desire to permit an action to proceed to completion in another tribunal may provide another cause. Other causes might include the lack of any connection with or interference with the pending bankruptcy case. For example, a divorce or child custody proceeding involving the debtor may bear no relation to the bankruptcy case. In that case, it should not be stayed. A probate proceeding in which the debtor is the executor or administrator of another's estate usually will not be related to the bankruptcy case, and should not be stayed. Generally, proceedings in which the debtor is a fiduciary, or involving postpetition activities of the debtor, need not be stayed because they bear no relationship to the purpose of the automatic stay, which is debtor protection from his creditors. The facts of each request will determine whether relief is appropriate under the circumstances.

H.R. Rep. No. 95-595, 95th Cong., 1st Sess. 343-44 (1977). For Congress, then, "cause" was a function of the relationship of the non-bankruptcy proceeding "to the purpose of the automatic stay." If allowing the proceeding to go forward would not undermine that purpose, there is cause. Otherwise, there is not.

6. Consistent with the Congressional purpose, in determining whether there is "cause" to permit a judicial proceeding to go forward, courts balance the prejudice to the bankruptcy estate were the stay lifted against the hardships faced by the party requesting relief from stay. See Sonnax Indus., Inc. v. Tri Component Products Corp. (In re Sonnax Indus., Inc.),

907 F.2d 1280, 1285 (2d Cir. 1990); In re Bogdanovitch, 292 F.3d 104, 110 (2d Cir. 2002); Wiley v. Hartzler (In re Wiley), 288 B.R. 818, 822 (8th Cir. B.A.P. 2003), citing Blan v. Nachogdoches County Hosp. (In re Blan), 237 B.R. 737 (8th Cir. B.A.P. 1999); In re Udell, 18 F.3d 403 (7th Cir. 1994). The common thread of all of the cases is a balancing of the hardships to the debtor, its creditors and the moving party if the stay is modified compared to the harm of the continued implementation of the stay. Put another way, the more the stay serves a purpose in the bankruptcy case, the less likely there is cause to modify it in the absence of true hardship to the non-debtor party.

ARGUMENT

Prejudice to the Estate Would be Great.

7. The Movants' claim must be liquidated either by settlement or by adjudication. If the latter, then the claim must be tried in the Illinois District Court, not this court. It is the timing of that trial that is crucial. The Mejdrech Action will require a lengthy, complicated and fact-intensive trial to determine whether the Debtor caused damage to the owners of 1400 homes and, if so, the amount of compensation for those damages. The Debtor and its attorneys will require substantial, concentrated effort to prepare for that trial. To be ready for trial, the Debtor's present attorneys would have to review over 230 boxes of materials and over 170 transcripts. See Declaration of Matthew A.C. Zapf, ¶ 4, a copy of which is attached hereto as Exhibit 2 ("Zapf Declaration"). While engaged in that preparation, the Debtor will also have to prepare for a hearing in an adversary proceeding against Honeywell, to be held on April 12, 2004, just one week before the Mejdrech Action is scheduled to go to trial. See Kuoni Declaration, ¶ 5. That will stretch the Debtor's resources even farther.

8. In the six months since the Petition Date, the Debtor has not devoted any resources to the Mejdrech Action, nor should it have. Rather, its primary focus has been on its

bankruptcy case, not on any of the stayed lawsuits. If the stay is modified, the Debtor will have to divert its resources and attention from its efforts to resolve this case and preparation for trial and the two-week trial itself. Charles F. Kuoni, III, President and CEO of the Debtor, devotes most of his time to Met-Coil's bankruptcy case, including negotiating with Mestek and the future claimants' representative, negotiating a disclosure statement and reorganization plan, reviewing claims, reviewing financial projections and pro formas, managing post-petition payments, negotiating with insurance carriers, and overseeing the work of professionals retained in this case. See Kuoni Declaration, ¶ 3. In addition to these bankruptcy-related issues, Mr. Kuoni has remained central to the continued operation of the Debtor's business and has spent considerable time on the Debtor's operations and on remediation at the site in Lisle, Illinois. See Id., ¶ 4.

9. If the automatic stay is modified, Mr. Kuoni will have to neglect those responsibilities to help protect the Debtor from the Movants' massive claim. See Id., ¶ 10. Moreover, the Debtor's other officers, who also devote much of their time to the Debtor's operations and to issues related to the bankruptcy case, will be forced to both take up some of Mr. Kuoni's functions and participate in trial preparation and trial. See Id., ¶ 11 ("a trial in April would not only distract me from fulfilling my obligations to Met-Coil's ordinary business and its reorganization, but it would significantly disrupt the vitally important business efforts of Met-Coil's other officers as well"). This would be extremely prejudicial to the Debtor's ability to both sustain its business and administer its bankruptcy case. Id., ¶ 11.

10. The Debtor's focus on its operations and on the reorganization is in keeping with the purpose of the automatic stay. "[T]he happenstance that a creditor's litigation was close to trial or close to judgment before the bankruptcy case was filed ... has little or nothing to do with what the debtor's energies and resources should be focused on for the benefit

of the entire estate and creditor body." Shepard v. Patel, et al. (In re Patel), 291 B.R. 169, 173 (Bankr. D. Ariz. 2003) (denying relief from stay).

11. Consistent with the Congressional focus on the purpose of the stay, courts have commonly denied relief where the litigation would disrupt the administration of the bankruptcy case. "The most important factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate. Even slight interference with the administration may be enough to preclude relief in the absence of a commensurate benefit." In re Curtis, 40 B.R. 795, 806 (Bankr. D. Utah 1984) (declining to permit movants to join the debtors as defendants in an existing state court lawsuit) (citing In re Penn-Dixie Industries, Inc., 6 B.R. 832 (Bankr. S.D.N.Y. 1980).

12. In Penn-Dixie, plaintiffs in antitrust litigation pending outside the bankruptcy court moved for relief from the automatic stay for the limited purpose of allowing discovery to go forward against the debtor. The bankruptcy court declined to lift the stay, noting that "[i]nterference by creditors in the administration of the estate, no matter how small, through the continuance of a preliminary skirmish in a suit outside the Bankruptcy Court is prohibited." 6 B.R. at 836. See also Sonnax, 907 F.2d 1286-88 (relief from stay denied where state-court proceeding would interfere with bankruptcy case, debtor did not file bankruptcy in bad faith, lifting of stay might doom debtor's chances of reorganization, and state-court litigation had not proceeded to the point that judicial economy would be served by lifting the stay); In re Johns-Manville Corp., 26 B.R. 405 (Bankr. S.D.N.Y. 1983) (cause did not exist to lift stay to permit asbestos plaintiffs' lawsuits against the debtor to continue to the point of judgment as such forced participation would represent tremendous burden on estate and would have negative effect of

vitiating the debtor's breathing spell and frustrating its attempts at reorganizing, thus defeating the goals of Chapter 11 reorganization).

13. The cases cited by the Movants in support of lifting the stay are distinguishable. In re Fowler, 259 B.R. 856 (Bankr. E.D. Tex. 2001), In re Hudgins, 102 B.R. 495 (Bankr. E.D. Va. 1989) and In re Todd Shipyards Corp., 92 B.R. 600 (1988) all involve simple personal injury cases which, as the Hudgins and Todd Shipyards courts note, are a special case: 28 U.S.C. § 157(b)(5) precludes the trial of such claims in the bankruptcy court, simplifying the inquiry into whether the stay should be lifted. In In re Continental Airlines, Inc., 152 B.R. 420 (D. Del. 1993), the court expressly pointed to the minimal disruption the litigation would have on the bankruptcy case as justification for lifting the stay. The debtor had already initiated a large-scale lawsuit over similar issues as those the movants sought to litigate, the contemplated proceedings "would involve, at most, the filing of a motion with briefs and perhaps oral argument," and the proceedings would not interfere with the bankruptcy case. Continental Airlines, 152 B.R. at 426. In contrast, the Mejdrech Action is complex, would require significant resources of the Debtor, and would substantially disrupt the reorganization.

14. Furthermore, as reflected in the Memorandum of Law in Support of Debtor's Motion to Enforce Section 362(a)(3) of the Automatic Stay, Or in the Alternative, For Preliminary Relief Under Section 362(a)(1) and 105 Extending the Stay of Mejdrech Litigation, filed on February 27, 2004, allowing the Mejdrech Action to proceed against both the Debtor and Mestek would put at risk the Debtor's alter ego claims against Mestek, which are property of the estate.

15. Finally, trial of the Mejdrech Action would impose a considerable financial burden on the estate. Phase I, the liability phase presently set for April 19, is likely to take two weeks. The cost to prepare for and try Phase I would be approximately $800,000. See

Zapf Declaration, ¶ 5. Contrary to Movants' assertions, the Debtor would not be reimbursed for its defense costs in connection with the Mejdrech Action because its insurers have denied responsibilities for those costs. See Kuoni Declaration, ¶ 16. Therefore, the cost of defending the action would be an expense borne by the estate and, ultimately, the Debtor's creditors.

Harm to the Movant Would be Minimal.

16. In contrast to the harm to the Debtor that would result were the stay to be lifted, the stay currently in effect does not prejudice the Mejdrech Class. The Debtor is requesting that the stay remain in place at least until June 2004, when the issue may be reconsidered. The automatic stay, as it applies to other creditors in this case, protects the Mejdrech Class by preventing other creditors from taking action against the bankruptcy estate. Furthermore, the Mejdrech plaintiffs are now on municipal water, or they receive bottled water. See Kuoni Declaration, ¶ 13. The issue in the Mejdrech Action is strictly about property values: whether the values of the homes in the class area were diminished because of the alleged contamination of their wells. Nothing that is relevant to that issue will change in the next three months. And, even if the Movants obtain a judgment, it could not be collected outside the context of this case. There is, therefore, nothing that requires the Mejdrech Action to proceed at this time.

CONCLUSION

17. The Debtor agrees with the Movants on a significant point: that the Movants' claims must be liquidated. However, April 19 is too soon to liquidate those claims at trial. To proceed on that date would cripple the bankruptcy reorganization. Maintaining the stay at least until June, on the other hand, would not prejudice the Mejdrech Class. The Motion should be denied. The Debtor has no objection, however, to setting the Motion for reconsideration in June.

WHEREFORE, the Debtor requests that this honorable Court enter an order denying the Motion, and providing such other and further relief as the Court deems appropriate.

Dated: March 3, 2004

MORRIS, NICHOLS, ARSHT & TUNNELL

Eric D. Schwartz (No. 3134)
Jason W. Harbour (No. 4176)
Daniel B. Butz (No. 4227)
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)
David E. Morrison (Illinois ARDC # 6217225)
Kathryn A. Pamenter (Illinois ARDC # 6231191)
55 E. Monroe Street, Suite 3700
Chicago, Illinois 60603
Telephone: (312) 201-4000
Facsimile: (312) 332-2196

Attorneys for the Debtor and
Debtor-in-Possession