

**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.)	
)	Obj. Deadline: July 26, 2004 - 4:00 p.m. (ET)
)	(requested)
)	Hearing Date: July 28, 2004 – 11:30 a.m. (ET)
)	(requested)

**DEBTOR'S MOTION TO APPROVE SETTLEMENT AGREEMENTS
REGARDING CLAIM NOS. 175, 195, 196, 197, 198, 199 AND 200**

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 the Settlement Agreements¹ regarding Claim Nos. 175, 195, 196, 197, 198, 199 and 200 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 AND VENUE

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)(A) and (B).²

¹ The Pelzer/Pepping Settlement Agreement, Meyer Settlement Agreement, Wroble Settlement Agreement, Hallmer Settlement Agreement, Ehrhart Settlement Agreement and Schreiber Settlement Agreement, as defined and incorporated herein by reference, are collectively referred to herein as the "Settlement Agreements".

² The Debtor recognizes the exception to 28 U.S.C. § 157(b)(2)(B) regarding the liquidation or estimation of personal injury suits. This motion, though, concerns the parties' settlement of the various claims underlying certain personal injury suits, thereby constituting a core proceeding.

2. The predicates for the relief requested herein are §§ 105 and 502(b) of the Bankruptcy Code and Bankruptcy Rule 9019.

BACKGROUND

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. On June 22, 2004, the Court approved the Fourth Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code (the "**Disclosure Statement**"), Exhibit A to which is the Fourth Amended Chapter 11 Plan of Reorganization Proposed by Met-Coil Systems Corporation and Mestek, Inc., as Co-Proponents, dated June 22, 2004 (as amended or modified, the "**Plan**"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

INTRODUCTION

6. As this Court is aware, 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 "**Lockformer Site**"). The Lockformer Site is operated by one of the Debtor's operating divisions, The Lockformer Company ("**Lockformer**").

7. The lawsuits described below arise from allegations that TCE migrated from the Lockformer Site onto residential properties that allegedly resulted in various personal injuries to persons living at such residential properties. The Debtor and Mestek, Inc., another defendant to certain of the actions and the Debtor's indirect parent ("**Mestek**"),

deny such allegations. Without admitting liability, the Debtor, Mestek and Formtek, Inc. ("**Formtek**"), the Debtor's parent, have reached settlements with respect to these lawsuits. All of the Settlement Agreements are contingent on confirmation of the Plan, the Effective Date of the Plan and in some cases, a good faith finding by the Illinois District Court (as defined below) and DuPage Probate Court approval.

a. **Daniel Pelzer and Sally Pepping.**

8. Plaintiffs Daniel Pelzer ("**Pelzer**") and Sally Pepping ("**Pepping**"), who are siblings, grew up at 4708 Elm Street in Lisle, Illinois, which property line is adjacent to the Lockformer Site. On August 21, 2001, Pelzer and Pepping filed a lawsuit (the "**Pelzer/Pepping Complaint**") against Lockformer, Mestek and Honeywell International Inc. ("**Honeywell**") in the United States District Court for the Northern District of Illinois (the "**Illinois District Court**"). In the Pelzer/Pepping Complaint, Pelzer and Pepping allege that long-term TCE exposure emanating from the Lockformer Site has caused kidney disease in Pelzer, necessitating a kidney transplant in 1993. Pepping, who donated the kidney for Pelzer's first transplant, seeks damages for the loss of her kidney, and claims that she has experienced infertility problems as a result of her TCE exposure. Lockformer, Mestek and Honeywell have denied liability.

9. Pelzer and Pepping claim to have spent a significant amount of time on the Lockformer Site riding dirt bikes, sledding on a hill just south of the facility where they ate snow, and playing in and around a creek that flowed from east to west along the northern boundary of their property. Multiple soil and well water tests conducted at 4708 Elm Street have always been negative for TCE. No expert opinions have been offered concerning the cause of Pelzer's or Pepping's diseases.

10. On November 13, 2003, Pelzer and Pepping each filed a proof of claim in an unliquidated amount against the Debtor ("**Claim Nos. 199 and 200**", respectively), arising from the allegations set forth in the Pelzer/Pepping Complaint.

11. On July 8, 2004, the Debtor, Mestek, Formtek, Pelzer and Pepping entered into that certain Settlement Agreement and Mutual Release, a true and correct copy of which is attached hereto as Exhibit A (the "**Pelzer/Pepping Settlement Agreement**").

12. Under the Pelzer/Pepping Settlement Agreement, Pelzer and Pepping shall receive a payment in the aggregate amount of \$142,400 under the Plan. The Debtor, Mestek, Formtek, the TCE PI Trust and the Trustee shall receive a full release.

b. **Deborah Meyer.**

13. On November 22, 2002, Deborah Meyer, individually and as executrix of the estate of Nicholas Meyer, deceased, and as mother and next friend of Derek Meyer, a minor, and Danielle Meyer, a minor (together, the "**Meyer Plaintiffs**") filed a First Amended Complaint At Law (the "**Meyer Complaint**") against Lockformer, Mestek and Honeywell in the Illinois District Court, alleging negligence, negligent infliction of emotional distress, nuisance, and willful and wanton conduct as well as claims for wrongful death and survival in connection with the death of Nicholas Meyer. Lockformer, Mestek and Honeywell have denied liability.

14. The Meyer family moved to 5230 Oakview Drive in Lisle, Illinois in November 1993. From that time until June 1996, their residence was served with well water provided by Citizens Utilities. On March 7, 2000, Mr. Meyer was hospitalized for abdominal pain, and studies revealed renal cell carcinoma and a kidney tumor that extended into his spleen. Emergency surgery was performed to remove the tumor, but Mr. Meyer

experienced a number of postoperative complications and died on March 22, 2000. No expert opinions have been offered concerning the cause of Mr. Meyer's cancer.

15. Quarterly tests conducted on the wells that serviced the Meyer residence until 1996 were negative for TCE except on three occasions, when TCE was detected at very low levels (0.7, 1.6 and 0.6 ppb).

16. On November 13, 2003, the Meyer Plaintiffs filed a proof of claim in an unliquidated amount against the Debtor ("**Claim No. 198**"), arising from the allegations set forth in the Meyer Complaint.

17. On July 8, 2004, the Debtor, Mestek, Formtek and the Meyer Plaintiffs entered into that certain Settlement Agreement and Mutual Release, a copy of which is attached hereto as Exhibit B (the "**Meyer Settlement Agreement**").

18. Under the Meyer Settlement Agreement, the Meyer Plaintiffs shall receive a payment under the Plan in the aggregate amount of \$200,000. The Debtor, Mestek, Formtek, the TCE PI Trust and the Trustee shall receive a full release.

c. **Laura Wroble.**

19. Plaintiff Laura Wroble ("**Wroble**") is the sister of Pepping and Pelzer. Both her childhood home and her current home are within a few hundred feet of the Lockformer Site, and Wroble claims to have contracted cervical cancer as a result of TCE exposure emanating from the Lockformer Site. On July 1, 2002, Wroble filed a Complaint At Law (the "**Wroble Complaint**") against Lockformer, Mestek and Honeywell in the Illinois District Court. Mestek has since been dismissed as a defendant in this lawsuit. Lockformer and Honeywell have denied liability.

20. In the Wroble Complaint, Wroble claims to have consumed as much as 100 ounces of tap water per day while growing up, and claims to have spent a great deal of time on the Lockformer Site. Wroble claims that each day after school she hunted for bugs, sledded, skated, picked berries, rode dirt bikes, or otherwise played on the property. Wroble also claims to have eaten snow while sledding on a hill immediately south of the Lockformer Site. Wroble claims that she still fears that her family is being exposed to TCE. Despite this, she has acknowledged picking berries on the Lockformer Site with her children, and her husband built a waterfall pond in their backyard, which is fed by water from the well. No expert opinions have been offered concerning the cause of Wroble's cancer. Multiple soil and water tests conducted at her childhood home have always been negative for TCE.

21. On November 13, 2003, Wroble filed a proof of claim in an unliquidated amount against the Debtor ("**Claim No. 195**"), arising from the allegations set forth in the Wroble Complaint.

22. On July 8, 2004, the Debtor, Mestek, Formtek and Wroble entered into that certain Settlement Agreement and Mutual Release, a copy of which is attached hereto as Exhibit C (the "**Wroble Settlement Agreement**").

23. Under the Wroble Settlement Agreement, Wroble shall receive a payment of \$37,500 under the Plan. The Debtor, Mestek, Formtek, the TCE PI Trust and the Trustee shall receive a full release.

d. **Virginia Hallmer.**

24. Plaintiff Virginia Hallmer ("**Hallmer**") is 53 years old and has resided at 591 Reidy Road in Lisle, Illinois since 1968. Her residence has been served by a private well during that entire period, and, in 2001, her well tested positive for TCE.

25. On August 28, 2002, Hallmer filed a Complaint At Law (the "**Hallmer Complaint**") against Lockformer, Mestek, Honeywell and Carlson Environmental, Inc. ("**Carlson**") which was removed to, and is pending in, the Illinois District Court. Lockformer, Mestek, Honeywell and Carlson have denied liability. Hallmer allegedly suffers from an unknown autoimmune disorder, and has had a significant medical history, including a stroke, pulmonary embolism, back problems, peripheral neuropathy, and polyneuropathies. She has testified that she is in constant pain, and reports that the medications she is taking have offered little relief. Hallmer claims that her current condition is caused by her exposure to TCE emanating from the Lockformer Site. No expert opinions have been offered concerning the cause of Hallmer's ailments.

26. On November 13, 2003, Hallmer filed a proof of claim in an unliquidated amount against the Debtor ("**Claim No. 197**"), arising from the allegations set forth in the Hallmer Complaint.

27. On July 8, 2004, the Debtor, Mestek, Formtek and Hallmer entered into that certain Settlement Agreement and Mutual Release, a copy of which is attached hereto as Exhibit D (the "**Hallmer Settlement Agreement**").

28. Under the Hallmer Settlement Agreement, Hallmer shall receive a payment of \$30,000.00 under the Plan, in exchange for which the Debtor, Mestek, Formtek, the TCE PI Trust and the Trustee shall receive a full release.

e. **Denise Ehrhart.**

29. Plaintiff Denise Ehrhart ("**Ehrhart**") is 25 years old and resided at 641 Reidy Road in Lisle, Illinois from 1980 through 1997. In her early twenties, she was diagnosed with kidney disease, and she had a kidney transplant in 2002. The Ehrhart well

has never been tested for TCE, but Ehrhart believes that she was exposed to TCE through drinking water allegedly contaminated with TCE from the Lockformer Site.

30. On August 28, 2002, Ehrhart filed a Complaint At Law (the "**Ehrhart Complaint**") against Lockformer, Mestek, Honeywell and Carlson which was removed to, and is currently pending in, the Illinois District Court. Lockformer, Mestek, Honeywell and Carlson have denied liability. One of Ehrhart's nephrologists has testified that he found no evidence in the medical literature to link her kidney disease with TCE exposure. Similarly, her kidney transplant nephrologist testified that her form of kidney disease is not associated with TCE exposure. In fact, none of Ehrhart's doctors have told her that her kidney disease was caused by TCE exposure.

31. On November 13, 2003, Ehrhart filed a proof of claim in an unliquidated amount against the Debtor ("**Claim No. 196**"), arising from the allegations set forth in the Ehrhart Complaint.

32. On July 8, 2004, the Debtor, Mestek, Formtek and Ehrhart entered into that certain Settlement Agreement and Mutual Release, a copy of which is attached hereto as Exhibit E (the "**Ehrhart Settlement Agreement**").

33. Under the Ehrhart Settlement Agreement, Ehrhart shall receive a payment of \$100,000.00 under the Plan, in exchange for which the Debtor, Mestek, Formtek, the TCE PI Trust and the Trustee shall receive a full release.

f. **Anne Schreiber.**

34. Plaintiff Anne Schreiber ("**Schreiber**") is a 33-year-old obstetrician who lived with her family at 733 Hitchcock Avenue in Lisle, Illinois between 1981 and 1992. In May 2002, Schreiber was diagnosed with non-Hodgkin's lymphoma ("**NHL**").

Schreiber has undergone chemotherapy, and her NHL is currently in remission. Her oncologist believes, however, that her life expectancy is only seven to eleven years because the recurrence of her NHL is a virtual certainty. Schreiber claims that her NHL was caused by exposure to TCE emanating from the Lockformer Site.

35. On August 28, 2002, Schreiber filed a Complaint for Negligence and Willful and Wanton Misconduct (the "**Schreiber Complaint**") against Lockformer, the Debtor, Mestek and Honeywell in the Illinois District Court. Lockformer, the Debtor, Mestek and Honeywell have denied liability in this case. Discovery in the case was set to close on October 1, 2003, with a jury trial set to begin on March 1, 2004.

36. Subsequent to the Petition Date, the Debtor, Mestek, Honeywell and Schreiber reached a settlement in principle. The settlement in principle requires the Debtor and Mestek to pay \$6,000,000.00 to Schreiber and requires Honeywell to pay \$1,200,000 to Schreiber in full and complete satisfaction of all of her claims, including claims for attorneys' fees and expenses.

37. On November 11, 2003, Schreiber filed a proof of claim in an unliquidated amount against the Debtor ("**Claim No. 175**"), arising from the allegations set forth in the Schreiber Complaint.

38. On July 8, 2004, the Debtor, Mestek, Formtek, Honeywell and Schreiber entered into that certain Settlement Agreement and Mutual Release, a copy of which is attached hereto as Exhibit F (the "**Schreiber Settlement Agreement**").

39. With respect to the Debtor, under the Schreiber Settlement Agreement, Schreiber shall receive a payment of \$6,000,000.00 under the Plan, in exchange for which the Debtor, Mestek, Formtek, the TCE PI Trust and the Trustee shall receive a full release.

RELIEF REQUESTED

40. By this Motion, the Debtor seeks entry of an order pursuant to §§ 105 and 502(b) of the Bankruptcy Code and Bankruptcy Rule 9019 approving the Settlement Agreements and authorizing it to enter into the Settlement Agreements.

41. 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. Section 502(b) authorizes the Bankruptcy Court to determine the amount of claims to be allowed. 11 U.S.C. § 502(b). Approving the Settlement Agreements and providing the Debtor with the authority to enter into the Settlement Agreements is clearly beneficial to the Debtor's estate and its creditors, as it eliminates attorneys' fees and expenses that the Debtor would incur in litigating the underlying claims, and allows the Debtor to obtain a release with respect to such claims.

42. 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)).

43. 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 Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc., 390 U.S. 414, 424-25 (1968) (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))).

44. In this instance, it is self-evident that the proposed settlements satisfy the standard set forth in Martin and TMT Trailer Ferry, and this Court should approve the Settlement Agreements. First, as with all litigation, the outcome of the various litigation matters concerning Claim Nos. 175, 195, 196, 197, 198, 199 and 200 is not certain, and success is not guaranteed. Second, such causes of action 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 Settlement Agreements because the settlements will bring finality to these litigation matters and eliminate the expenses that the Debtor would be required to incur to continue to litigate the matters at issue. Fourth, the Settlement Agreements represent a fair and equitable result to all parties in interest of the disputes at issue.

45. The Settlement Agreements are the result of good faith negotiations among the various parties and are in the best interests of the Debtor's creditors and estate. Accordingly, the Settlement Agreements should be approved.

NOTICE

46. 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 to the plaintiffs in the various litigation matters; (e) counsel for the future claimants' representative; and (f) all parties that have requested notice of pleadings pursuant to Bankruptcy Rule 2002.³

NO PRIOR REQUEST

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

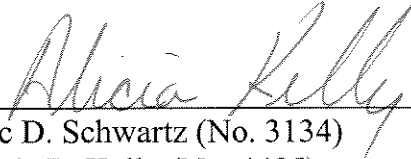
³ Contemporaneously herewith, the Debtor has filed motions to shorten and limit notice with respect to this motion. In addition, the Debtor is not serving a copy of the exhibits with the motion, as they are voluminous. To the extent any party desires a copy of the exhibits, they can be obtained through the Bankruptcy Court's website, BMC's website or from the Debtor's counsel.

WHEREFORE, the Debtor respectfully requests that the Court enter an order:

(a) approving the Settlement Agreements pursuant to Bankruptcy Code §§ 105 and 502(b) and Bankruptcy Rule 9019, (b) authorizing the Debtor to enter into the Settlement Agreements; and (c) granting such other and further relief as is just and proper.

Dated: July 20, 2004

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