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: October 13, 2003**
	)	**Hearing Date: October 20, 2003 at 3:00 p.m. (EDT)**

APPLICATION OF MET-COIL SYSTEMS CORPORATION PURSUANT TO 11 U.S.C. §§ 105 AND 1109 FOR THE APPOINTMENT OF ERIC D. GREEN AS LEGAL REPRESENTATIVE FOR FUTURE CLAIMANTS

Met-Coil Systems Corporation (**"Met-Coil"** or **"Debtor"**), as debtor and debtor in possession, by and through its undersigned counsel, hereby moves this Court for an order under 11 U.S.C. §§ 105 and 1109 for the appointment of Eric D. Green as legal representative for future claimants (the **"Application"**) effective as of September 10, 2003. In support of this Application, Met-Coil respectfully represents 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 Application is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. The statutory predicates for the relief requested herein are sections 105(a) and 1109 of the title 11 of the United States Code (the "**Bankruptcy Code**").

INTRODUCTION

3. On August 26, 2003 (the **"Petition Date"**), the Debtor filed a voluntary petition for reorganization relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

4. The Debtor is operating its business as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.[1] An official committee of unsecured creditors (the "Committee") has been appointed and is serving.

5. Met-Coil filed this chapter 11 proceeding in order to obtain relief from a mounting tide of lawsuits that had been filed against it as a result of an alleged release of trichloroethylene ("**TCE**") into the soil at the Lisle facility of one of Met-Coil's operating divisions, the Lockformer Company. The plaintiffs in these lawsuits, allege, amongst other things, property damages, diminution in property values, nuisance and personal injuries. Certain of the lawsuits also seeks punitive damages from Met-Coil.

6. Most of the plaintiffs in these suits own property or live near the Lisle facility. As is common with claims arising from alleged environmental contamination, it may take years for claimants to develop injuries or realize that their property has been damaged. Many claimants may not realize that they might have a claim against Met-Coil because no damages or injuries have developed or been discovered. Other claimants may allege that their claims arose after the Petition Date. In order to protect the rights and interests of these persons who may have claims or demands against Met-Coil or other third parties arising after the Petition Date as a result of the

[1] A detailed description of the Debtor's business operations and the history and status of all pending litigation against the Debtor can be found in the *Affidavit of Charles F. Kuoni III in Support of First Day Motions of Met-Coil Systems Corporation* [Docket No. 3].

alleged release of TCE (**"Future Claimants"**), the Debtor believes this Court should appoint a representative to protect the interests of the Future Claimants (the **"Future Claimants' Representative"**).

RELIEF REQUESTED

7. By this Application, the Debtor seeks entry of an Order pursuant to sections 105 and 1109 of the Bankruptcy Code appointing Eric D. Green to act as the Future Claimants' Representative to represent the interests of the Future Claimants effective as of September 10, 2003.

BASIS FOR RELIEF REQUESTED

8. Since the commencement of this case, one of Met-Coil's key objectives has been to formulate a plan of reorganization acceptable to the principal constituencies in Met-Coil's chapter 11 case. Met-Coil presently anticipates that a key element of any plan of reorganization that it proposes will be a channeling injunction pursuant to which all current and future claims and demands against Met-Coil and other third parties will be channeled to a trust established to equitably distribute available assets to holders of all such allowed claims and demands.

9. At the request of debtors, creditors and the United States Trustees, bankruptcy courts in numerous jurisdictions have used sections 1109(b) and 105(a) of the Bankruptcy Code to appoint representatives for future mass tort claimants. To protect the rights and interests of persons who may have claims or demands against a debtor or other third parties arising after the commencement of a case, bankruptcy courts have, in other cases, appointed a legal representative to represent the interests of these persons. See In re Amatex Corp., 755 F.2d 1034, 1042 (3d Cir. 1985) (holding that interests of future

plaintiffs should be represented in bankruptcy reorganization cases); see also Jones v. Chemtron Corp., 212 F.3d 199, 210-11 (3d Cir. 2000) ("[w]here no action is taken to address the interests of unborn future claimants in a [bankruptcy case], the reorganized former debtor cannot later avoid liability to such claims by arguing that their claims were discharged in bankruptcy.").

10. Statutory authority supports the appointment of the Future Claimants' Representative. The term "party in interest," as used in section 1109(b) of the Bankruptcy Code, has been construed to encompass parties such as the Future Claimants. See, e.g., In re Johns-Manville Corp., 36 B.R. 743, 748-49 (Bankr. S.D.N.Y. 1984, aff'd, 52 B.R. 940 (S.D.N.Y. 1985). Future Claimants are parties in interest in this chapter 11 case because their rights to payment will be affected by these proceedings. Moreover, the Court's equitable powers under section 105(a) of the Bankruptcy Code include the power to provide for the representation of Future Claimants. See, e.g., In re UNR Indus., Inc., 46 B.R. 671, 675 (Bankr. N.D. Ill. 1985).

11. Precedent also exists outside of bankruptcy law for the appointment of a Future Claimants' Representative for the interest of unknown claimants. See, e.g., Sam Fox Pub. Co. v. U.S., 366 U.S. 683, 691 (1961) (holding that class action judgment "will bind only those members of the class whose interests have been adequately represented"); Hatch v. Riggs Nat'l Bank, 361 F.2d 559 (D.C. Cir. 1966) (holding that the use of a guardian ad litem to represent interests of unascertainable beneficiaries was appropriate).

12. The appointment of the Future Claimants' Representative will assure that all parties in interest, including Future Claimants, will have a fair opportunity

to participate in the reorganization process. The appointment of a Future Claimants' Representative will facilitate the negotiation of a consensual plan of reorganization by assuring that all parties in interest, including Future Claimants, will have a fair opportunity to participate in the process.

13. After the commencement of this case, Met-Coil began discussions with certain plaintiffs in the currently pending lawsuits with respect to the framework of a plan. These discussions resulted in execution of a letter agreement pursuant to which the treatment of the claims held by these plaintiffs was agreed to, subject to the ability of Met-Coil to propose a confirmable plan incorporating such agreement. In order to propose such a plan, the Debtor must determine the extent of and present value of potential, future property damage and personal injury claims. Therefore, the Debtor has determined that a Future Claimants' Representative should be appointed. It has further been determined that Eric D. Green is well qualified to represent the interests of the Future Claimants and, therefore, should be appointed as the Future Claimants' Representative for the Future Claimants.

Eric D. Green is Qualified to Serve as the Future Claimants' Representative

14. Met-Coil respectfully submits that Eric D. Green is well qualified to serve as the Future Claimants' Representative. Mr. Green is a professor at Boston University School of Law. He has been a court appointed mediator and a court appointed futures representative in asbestos cases. He teaches classes on mass torts, complex litigation, negotiation and mediation. His qualifications are more fully set forth in the Affidavit of Eric D. Green in support of the Debtor's Application for Appointment of

Legal Representative for Future Claimants (the "**Eric D. Green Affidavit**") attached hereto as Exhibit "A."

15. Met-Coil believes that Eric D. Green's many years of practical experience in the area of mass tort litigation and future claimants representations makes him well qualified to fully comprehend the issues relevant to this chapter 11 case and to competently and effectively represent the interests of the Future Claimants.

16. Accordingly, Met-Coil requests that the Court appoint Eric D. Green to serve as the Future Claimants' Representative to represent the interests of the Future Claimants.

17. As set forth in the Eric D. Green Affidavit, Eric D. Green is "disinterested" as such term is defined in section 101(14) of the Bankruptcy Code.

18. Met-Coil requests that the appointment of Eric D. Green be made on the following terms and conditions:

a. Standing. The Future Claimants' Representative will have standing under section 1109(b) of the Bankruptcy Code to be heard as a party in interest in all matters relating to the Debtor's chapter 11 case, and will have such powers and duties of a committee as set forth in section 1103 of the Bankruptcy Code as are appropriate for a Future Claimants' Representative. See In re Johns-Manville Corp., 52 B.R. 940, 942 (S.D.N.Y. 1985) (legal representative for future claims was authorized to exercise powers and perform duties of a committee under section 1103 of the Bankruptcy Code); In re UNR Indus., Inc., 71 B.R. 467, 478 (Bankr. N.D. Ill. 1987) (stating that the future claims representative was granted the powers and responsibilities of a committee).

b. Engagement of Professionals. The Future Claimants' Representative may employ attorneys, and other professionals and experts, consistent with sections 105, 327 and 1103 of the Bankruptcy Code, subject to prior approval of the Bankruptcy Court.

c. Compensation. Compensation, including professional fees and reimbursement of expenses, will be payable to the Future Claimants' Representative and his professionals from Met-Coil's estate, subject to approval of the Bankruptcy Court, and such other orders as may be entered by the Bankruptcy Court with respect to the compensation of professionals in this case. The Debtor and Mr. Green have agreed that Mr. Green will be compensated at the rate of $600 per hour.

d. Liability/Indemnity of Future Claimants' Representative. The Future Claimants' Representative will not be liable for any damages, or have any obligations other than as prescribed by orders of this Court; provided, however, that the Future Claimants' Representative will be liable for damages caused by his willful misconduct or gross negligence. The Future Claimants' Representative will not be liable to any person as a result of any action or omission taken or made by the Future Claimants' Representative in good faith. Met-Coil will indemnify, defend and hold the Future Claimants' Representative harmless from any claims by any party against the Future Claimants' Representative arising out of or relating to the performance of his duties as Future Claimants' Representative, provided however, that the Future Claimants' Representative will not have such indemnification rights if a court of competent jurisdiction determines pursuant to a final and non-appealable order that the Future Claimants' Representative is liable upon such claim as a result of willful misconduct or gross negligence. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in Met-Coil's chapter 11 case (that order having become a final order and no longer subject to appeal), and (ii) the entry of an order closing Met-Coil's chapter 11 case, the Future Claimants' Representative believes that he is entitled to payment of any amounts by Met-Coil on account of Met-Coil's indemnification, contribution or reimbursement obligations under this Order, including, without limitation, the advancement of defense costs, the Future Claimants' Representative must file an application in this Court, and Met-Coil may not pay any such amounts to the Future Claimants' Representative before the entry of an order by this Court approving the payment. The preceding sentence is intended to specify the period of time under which this Court shall have the jurisdiction over any request for fees

and expenses by the Future Claimants' Representative for indemnification, contribution or reimbursement and is not a limitation on the duration of Met-Coil's obligation to indemnify the Future Claimants' Representative. In the event that a cause of action is asserted against the Future Claimants' Representative arising out of or relating to the performance of his duties as Future Claimants' Representative, the Future Claimants' Representative shall have the right to choose his own counsel.

e. Liability Insurance: Eric D. Green has advised the Debtor that he is unwilling to accept the proposed appointment as Future Claimants' Representative unless the Debtor (at its own cost) provides him with appropriate and acceptable liability insurance coverage effective as of the date of his appointment as Future Claimants' Representative (the "Future Claimants' Representative Liability Insurance"). By this motion, the Debtor seeks the Court's authority to obtain the Future Claimants' Representative Liability Insurance and pay the premiums necessary to maintain such insurance coverage.

f. Right to Receive Notices. The Future Claimants' Representative and his counsel shall be entitled to receive all notices and pleadings that are served upon any committee appointed in this case or any other third parties in interest and their respective counsel pursuant to any and all orders entered in this chapter 11 case.

19. For all of the foregoing reasons, the Debtor submits that the appointment of Eric D. Green as Future Claimants' Representative is in the best interest of Met-Coil, its estate, its creditors, the Future Claimants, and all other parties in interest. Moreover, Met-Coil requests that such appointment be made effective as of September 10, 2003.

20. As set forth in the Eric D. Green Affidavit, Met-Coil requests that its retention be made effective as of September 10, 2003 in order to allow Eric D. Green to be compensated for any work he may have performed for Met-Coil on or after the Petition Date, but prior to the submission of this Application. Met-Coil submits that

these circumstances are of a nature warranting retroactive approval. See, e.g., F/S Airlease II, Inc. v. Simon (In re F/S Airlease II, Inc.), 844 F.2d 99, 103 (3d Cir.), cert. denied, 488 U.S. 852 (1988); Indian River Homes, Inc. v. Sussex Trust Co., 108 B.R. 46, 51 (D. Del. 1989).

NOTICE

21. Notice of this Application has been given to (a) the Office of the United States Trustee for the District of Delaware; (b) counsel for the Debtor's prepetition and postpetition secured lenders; (c) counsel for the Committee (d) the United States Environmental Protection Agency; (e) the Attorney General of the State of Illinois; (f) the DuPage County State's Attorney; (g) counsel to the plaintiffs in the environmental litigation matters pending before the United States District Court for the Northern District of Illinois and the Circuit Court for the Eighteenth Judicial District, DuPage County (collectively, the "Core Group"); and (h) all parties listed on the Core Group service list and those that have requested notice of pleadings pursuant to Bankruptcy Rule 2002. The Debtor submits that the notice provided is appropriate under the circumstances and that no other or further notice need be given.

NO PRIOR REQUEST

22. No previous request for the relief sought in this Application has been made to this Court or any other court.

WHEREFORE, Met-Coil respectfully requests that the Court enter an order (a) authorizing it to appoint a Future Claimants' Representative to represent the interests of the Future Claimants; (b) appointing Eric Green to serve as the Future Claimants' Representative for Future Claimants in accordance with the terms and conditions set forth herein, and (c) granting to Met-Coil such other and further relief as is just.

Dated: September 22, 2003

MORRIS, NICHOLS, ARSHT & TUNNELL

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