IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
MET-COIL SYSTEMS CORPORATION,	)	Case No. 03-12676 (MFW)

MEMORANDUM OF LAW OF CO-PROPONENT MESTEK, INC. IN FURTHER SUPPORT OF CONFIRMATION OF THE CHAPTER 11 PLAN OF REORGANIZATION FOR MET-COIL SYSTEMS CORPORATION

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INTRODUCTION[1]

Met-Coil's Chapter 11 case was commenced less than one year ago in response to the crushing weight of litigation, asset depletion, and business distraction engendered by trichloroethylene ("TCE") spills at its Lockformer facility in Lisle, Illinois. TCE is a chlorinated solvent that Met-Coil used as a metal "degreaser" and stored in a rooftop tank atop its Lockformer facility. Honeywell[2] and its predecessors, including AlliedSignal, Inc., owned and maintained the rooftop storage tank and supplied the spilled TCE to Met-Coil long before Mestek became Met-Coil's indirect parent in December, 2000. The alleged TCE contamination and its alleged migration into the surrounding property and groundwater spurred a wave of governmental enforcement, property damage, and personal injury actions.

Met-Coil's stated purposes in reorganizing are to ensure a satisfactory remediation of the TCE spills, to compensate those that have suffered alleged harm to their persons and property as a result of the spills, to ensure substantial payment of outstanding unsecured claims and trade debt, and to preserve the business and jobs associated with its sheet metal fabrication machinery enterprise. Mestek and Met-Coil have proposed a Plan designed to accomplish all of these goals. The principal conditions upon which the Plan is based are substantial cash contributions by Mestek and certain insurers (the "Settling Insurers") to pay for the various Plan components in return for litigation finality—that is, the Channeling Injunction and Releases preventing action against Mestek and the Settling Insurers relating to, among other

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[1] As used in this Supplemental Memorandum, "Met-Coil" refers to the Debtor, Met-Coil Systems Corporation and "Mestek" refers to Mestek, Inc., co-proponents of the Fourth Amended Chapter 11 Plan of Reorganization, dated June 22, 2004 (the "Plan").

[2] As used in this Supplemental Memorandum, "Honeywell" refers to Honeywell International, Inc.

things, the TCE spills in which neither took part, and other potential claims against Mestek under alter ego and similar theories.

Mestek respectfully submits this Supplemental Memorandum in further support of the Plan as a supplement to the memorandum submitted by Met-Coil. The relevant factual background is set forth in Met-Coil's memorandum, and is not repeated below. Instead, this Supplemental Memorandum focuses on the propriety of the Channeling Injunction and Releases, and demonstrates further that the relief provided under the Plan to Mestek and other protected and released parties in exchange for substantial contributions to the Plan is warranted under the law. For the reasons set forth below, and in the Memorandum of Law In Support of the Confirmation of the Fourth Amended Chapter 11 Plan of Reorganization Dated June 22, 2004, and accompanying declarations, the Court should enter an Order confirming the Plan in all respects.

ARGUMENT

I. THE COURT IS VESTED WITH JURISDICTION TO APPROVE THE CHANNELING INJUNCTION AND RELEASES

Pursuant to Section 157(b)(2)(L) of the Judicial Code, the Court is vested with "core" jurisdiction to approve Met-Coil's Plan. 28 U.S.C. § 158(b)(2)(L); In re Magnatrax Corp., No. 03-11402(PJW), 2003 WL 22807541 at *3 (Bankr. D. Del. 2003). Because this proceeding concerns whether to approve Met-Coil's Plan, it is core. Accordingly, the Court has jurisdiction to enter a final order in determining whether the Plan's terms comply with the Bankruptcy Code and should be confirmed, including those "appropriate provision[s] not inconsistent with the applicable provisions" of the Bankruptcy Code. 11 U.S.C. § 1123(b)(6).

The Channeling Injunction and Release provisions are, as described below, "appropriate" and "not inconsistent" with the provisions of the Bankruptcy Code.

Indeed, the only provision of the Bankruptcy Code potentially "inconsistent" with the Channeling Injunction and Releases is Section 524(e), which states that a bankruptcy discharge "does not affect the liability of any other entity on, or the property of any other entity for, such debt." 11 U.S.C. § 524(e). Third-party injunctions and releases in circumstances that are warranted under Section 105(a) of the Bankruptcy Code—as with the Channeling Injunction and Releases here—are not inconsistent with Section 524(e). As the Sixth Circuit declared in In re Dow Corning Corp., 280 F.3d 648, 657 (6th Cir. 2002), Section 524(e) "explains the effect of a debtor's discharge. It does not prohibit the release of a non-debtor." (Emphasis added). The Third Circuit is in accord with Dow Corning. See In re PWS Holding Corp., 228 F.3d 224, 247 (3d Cir. 2000) (in In re Continental Airlines, 203 F.3d 203 (3d Cir. 2000), "[w]e did not treat § 524(e) as a per se rule barring any provision in a reorganization plan limiting the liability of third parties"); Continental, 203 F.3d at 211 (limiting liability of third parties may be appropriate where the "hallmarks of permissible non-consensual releases" are present).

Even should the Court question its core jurisdiction to approve the Plan, and in particular its Channeling Injunction and Release provisions, the Plan should nevertheless be approved. At a minimum, the Court is vested with "related to" jurisdiction to determine whether the Channeling Injunction and Releases are appropriate. See Celotex Corp. v. Edwards, 514 U.S. 300 (1995); In re Pacor, Inc. v. Higgins, 743 F.2d 984, 996 (3rd Cir. 1984), rev'd on other grounds, Things Remembered, Inc. v. Petrarca, 516 U.S. 124, 134-35 (1995). Here, as in Celotex, approval of the Channeling Injunction and Releases is the "lynchpin" of the Plan. Rejection of the Channeling Injunction and Releases would "destroy any chance" of resolving

the flood of TCE liability claims, funding the costs of remediation, funding the costs of connecting homeowners to municipal water supplies, and funding the various other creditor claims without extensive and unpredictable litigation and crushing costs. Celotex, 514 U.S. at 310. Under these circumstances, the Court is also vested with "related to" jurisdiction. See In re Dow Corning Corp., 255 B.R. 445, 476 (E.D. Mich. 2000).[3]

II. THE CHANNELING INJUNCTION AND RELEASES SHOULD BE APPROVED IN THE PUBLIC INTEREST

Although the Bankruptcy Code does not expressly provide for non-debtor third-party injunctions and releases to facilitate a plan, Section 105(a) of the Bankruptcy Code accords authority to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Founded upon this authority, courts have approved non-debtor third-party injunctions and releases in "extraordinary cases" to satisfy fundamental bankruptcy and public interests. These include providing the debtor with a reorganized "fresh start", conserving judicial and debtor resources by ensuring litigation finality, and maximizing and hastening creditor recoveries. In re Continental Airlines, 203 F.3d 203, 211-212 (3d Cir. 2000); see also United States v. Energy Resources Co., Inc., 495 U.S. 545, 549 (1990) (Section 105(a) is "consistent with the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships"); In re Wedgewood Realty Group, Ltd., 878 F.2d 693, 701 (3d Cir. 1989) (Section 105(a) meets "congressional objectives by protecting the interests of both the creditor and debtor").

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[3] Should the Court determine that its jurisdiction to approve the Channeling Injunction and Releases is "related to" the Debtor's Bankruptcy case, Mestek respectfully requests that the Court confirm all components of the Plan that fall within its core jurisdiction and approve those components that fall within its related to jurisdiction. Mestek will then seek confirmation of the remaining components in the District Court pursuant to Bankruptcy Rule 9033.

Accordingly, injunctions have been approved in instances in which the court seeks to resolve competing mass tort claims against limited debtor assets, and the third-party injunction created the "legal environment" that enabled the non-debtor to contribute the assets necessary to compensate injured claimants. E.g., Menard- Sanford v. Mabey (In re A.H. Robins Co.), 880 F.2d 694, 701 (4th Cir. 1989) (third-party releases approved as necessary to reorganization and were accompanied by substantial consideration for mass medical product liability claimants), cert. denied, 493 U.S. 959 (1989); MacArthur Co. v. Johns-Manville Corp., 837 F.2d 89, 94 (2nd Cir. 1988) (third-party releases permitted "to provide a means of satisfying Manville's ongoing personal injury liability while allowing Manville to maximize its value by continuing as an ongoing concern"), cert. denied, 488 U.S. 868 (1988); In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 293 (2d Cir. 1992) (third-party releases approved as necessary to reorganization and were accompanied by substantial consideration for securities fraud claimants).

Met-Coil's Plan is designed to fulfill the same fundamental bankruptcy and public interests, and as such, its Chapter 11 case is "extraordinary." As in A.H. Robins, MacArthur, and Drexel, Met-Coil commenced its Chapter 11 case in response to a flood of tort claims relating to TCE spills at its Lockformer facility. The tort claims include property and personal injury claims made on behalf of over 1,500 claimants, as well as multiple governmental actions. These Claims posed a risk of tens of millions of dollars. (Kuoni Decl. ¶¶ 15-22.) Met-Coil's value as an operating enterprise has been calculated at no more than $13.9 million (Stephens Decl. ¶ 10)—well short of the amount necessary to fund the TCE PI Trust as calculated by the Future Claims Representative, and without regard to the millions of additional dollars necessary to satisfy property and other creditor claims. (Green Aff. ¶ 41; Kuoni Decl. ¶ 120.)

Met-Coil and Mestek have proposed a Plan designed to resolve all claims—TCE-related and otherwise—in full or substantial part, in an efficient manner, and without protracted litigation, wasted resources, or lost jobs. The Plan's success is dependant upon contributions in excess of $45 million proposed by Mestek and the additional $16.9 million in contributions proposed by the Settling Insurers. (Shea Decl. ¶¶ 18, 22; Kuoni Aff. ¶ 81.) These assets will not be contributed to Met-Coil's Plan short of litigation finality for the contributing third-parties, including receipt of an approved Channeling Injunction and Releases. (Shea Decl. ¶¶ 22-23; Kuoni Aff. ¶ 82.) Thus, the fundamental bankruptcy and public interests of ensuring the debtor a fresh start, conserving judicial and debtor resources by ensuring litigation finality, and maximizing and hastening creditor recoveries, compel approval of the Plan and its associated Channeling Injunction and Releases.

The public's interest in approval of Met-Coil's Plan and its linked Channeling Injunction and Releases, however, extends well beyond the bankruptcy and judicial economy interests achieved by the plans approved in A.H. Robins, MacArthur, and Drexel. Unlike those cases in which the injurious circumstances had ceased to occur, the TCE contamination that was the ultimate cause of Met-Coil's Chapter 11 case, pending further remediation, may remain a continued threat to the property surrounding, and citizens living within the vicinity of, Met-Coil's Lockformer facility. Regardless of whether these threats are valid—Met-Coil and Mestek believe they are not—the Plan provides an additional $3 million Mestek guaranty, earmarked to ensure payment of costs associated with remediation of the Lockformer Site and an commits additional funds (estimated at $2 million) to connect various homeowners to a municipal water supply. (Shea Decl. ¶ 18; Kuoni Decl. ¶¶ 57-58.) Ensuring prompt property remediation and uncontaminated drinking water for residents, rather than protracted and complex environmental

litigation, further demonstrates that the proposed Plan and attached Channeling Injunction and Releases are fair, reasonable, and consistent with the public interest. Interfaith Community Organization v. Honeywell Intern., Inc., 263 F. Supp. 2d 796, 801 (D.N.J. 2003) (public has interest in "a prompt clean up" of environmental contamination); In re Mountain Laurel Resources Co., NO. CIV.A. 5:99-0180, 1999 WL 33542427 at *4 (S.D.W. Va. Jun 09, 1999) ("it is beyond dispute that there is a strong public interest in abating the water pollution" and the court will not revisit settlement agreements when "settlement proceeds are needed to conduct water remediation"), aff'd, 210 F.3d 361 (4th Cir. 2000); City of New York v. Exxon Corp., 697 F. Supp. 677, 693 (S.D.N.Y. 1988) (settlement "clearly in the public interest" given the "immediate public benefit" to funds "for cleanup and remediation costs which might otherwise be drawn from public coffers" and avoiding "having to prosecute possibly fruitless claims against the settling companies").

In short, Met-Coil's Chapter 11 case is "extraordinary" under A.H. Robins, MacArthur, and Drexel, and its Plan has been proposed to address those elements of its case that render it "extraordinary." The broad public interests in ensuring Met-Coil a fresh start, providing maximum recoveries to creditors, limiting the judicial resources necessary to resolve the creditors' claims, remediation of the Lockformer Site, and ensuring safe drinking water compel approval of the lynchpins of Met-Coil's Plan: The Channeling Injunction and the Releases.

III. THE CHANNELING INJUNCTION AND RELEASES SHOULD BE APPROVED BECAUSE THEY ARE FAIR, NECESSARY TO THE PLAN, AND ARE SUPPORTED BY SUBSTANTIAL CONSIDERATION

The Channeling Injunction and Releases should also be approved because the "hallmarks of permissible non-consensual releases" are present—namely, "fairness, necessity to the reorganization, and specific factual findings to support these conclusions" as well as "fair

consideration." In re Continental Airlines, 203 F.3d 203, 211 (3d Cir. 2000); accord In re Dow Corning Corp., 280 F.3d 648, 657 (6th Cir. 2002); In re A.H. Robins Co., 880 F.2d 694, 701 (4th Cir. 1989); cf. McCartney v. Integra Nat. Bank North, 106 F.3d 506, 509 (3d Cir. 1997) ("Unusual circumstances" arise under Section 105(a) in extending stays to third parties where there is "an identity between the debtor and the [non-debtor] third-party defendant" and the "stay protection is essential to the debtor's efforts of reorganization"). In determining whether to approve third-party injunctions and releases, courts in this and other Circuits consider a number of factors initially set forth in In re Master Mortgage Inv. Fund, Inc., 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994), including:

> (1) an identity of interests between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete assets of the estate;
>
> (2) the non-debtor has contributed substantial assets to the reorganization;
>
> (3) the injunction is essential to reorganization, so that, without it, there is little likelihood of success;
>
> (4) a substantial majority of the creditors agree to such injunction, specifically, the impacted class, or classes, has "overwhelmingly" voted to accept the proposed plan treatment; and
>
> (5) the plan provides a mechanism for the payment of all, or substantially all, of the claims of the class or classes affected by the injunction.

See Continental Airlines, 203 F.3d at 217 n.17; In re Zenith Electronics Corp., 241 B.R. 92, 110 (Bankr. D. Del. 1999). Although they "are neither exclusive nor are they a list of conjunctive requirements" (In re Exide Technologies, 303 B.R. 48, 71-72 (Bankr. D. Del. 2003)), Met-Coil's Plan meets each of these factors.

A. There Is An Identity Of Interest Among Mestek, The Settling Insurers, And Met-Coil

The Plan meets the first Master Mortgage factor because there is an identity of interest among Mestek, the Settling Insurers, and Met-Coil.[4] The personal injury and property damage claims asserted against Mestek, and indirectly against the Settling Insurers, arise from TCE spills at Met-Coil's Lockformer Site. Thus, to find liability against Mestek (and the Settling Insurers), the TCE plaintiffs generally must establish liability against Met-Coil in the first instance. Under these circumstances alone, there is an identity of interests among Met-Coil, Mestek, and the Settling Insurers. Dow Corning, 287 B.R. at 396 (finding an identity or interests because "[t]he claims against the shareholders arise from an identical set of facts" as those against the debtor and the claims against the debtor and its shareholders are "essentially the same exact cases").[5]

Met-Coil and Mestek also have an identity of interest because they share liability insurance assets. The insurance policies upon which contributions by Settling Insurers are based provide shared primary coverage to both Met-Coil and secondarily to Mestek. Thus, Met-Coil and Mestek compete for the same insurance coverage by the Settling Insurers, based upon virtually identical bases of liability. There is an identity of interest among Met-Coil, Mestek, and

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[4] Although an identity of interest is often demonstrated by an indemnity relationship, courts acknowledge that an indemnity relationship is only one means by which to establish identity of interest. Dow Corning, 287 B.R. at 402.

[5] With respect to other released claims—consisting principally of potential future alter ego and similar claims by persons with non-TCE-related claims that did not vote on the Plan, or accept benefits under the Plan—the interests of Met-Coil and Mestek are similarly aligned. As with the TCE litigation, to find Mestek liable as Met-Coil's alter ego will require a finding that Met-Coil is liable in the first instance. Under these circumstances too, there is an identity of interest.

the Settling Insurers for this separate reason. See Dow Corning, 287 B.R. at 402-03 (identity of interest where the third-party shared insurance coverage with the debtor).

Finally, Mestek and the Settling Insurers as the entities funding the Plan share an identity of interest with Met-Coil to ensure that the Plan succeeds and the company reorganizes. As demonstrated below, Mestek's and the Settling Insurers' substantial contributions to the Plan are intended to create finality in TCE litigation, accord personal and property injury claimants increased recoveries, and to reorganize Met-Coil into a viable and profitable entity. Continued litigation against these related third parties—even assuming Mestek and the Settling Insurers would contribute assets without the Channeling Injunction and Releases, which they would not—would heavily burden the newly reorganized Met-Coil and its management because they would have to assist Mestek in its defense. See Zenith, 241 B.R. at 110.

In sum, there is an identity of interests among Met-Coil, Mestek, and the Settling Insurers. The first Master Mortgage factor is, therefore, satisfied.

B. Mestek And The Settling Insurers Are Contributing Substantial Assets To Met-Coil's Reorganization

Mestek and the Settling Insurers are also contributing substantial assets—including 100% of all cash funding—to Met-Coil's reorganization. Under the Plan, Mestek will contribute in excess of $54,000,000 in value to Mestek's Plan, including cash and non-cash compensation, in exchange for, among other things, the Channeling Injunction and Releases. (Shea Decl. ¶ 18.) See Master Mortgage, 168 B.R. at 935 (substantial contribution whether third parties "released $3 million in claims"). Under the Plan, the Settling Insurers will contribute $16,900,000 in insurance proceeds—constituting 100% of available primary insurance—in exchange for, among other things, the Channeling Injunction and Releases. (Shea Decl. ¶ 19;

Kuoni Decl. ¶ 54; Shafir Decl. ¶ 3.) Mestek's and the Settling Insurers' contributions to the Debtor's reorganization are well in excess of Met-Coil's enterprise value of approximately $13,900,000, excluding the estimated costs of remediation and $10,200,000 if the estimated costs of remediation remain an obligation of Met-Coil. (Stephens Decl. ¶ 10.) In short, both Mestek and the Settling Insurers have provided consideration for the Channeling Injunction and Releases, and the consideration is substantial.

C. The Channeling Injunction And Releases Are Essential To The Reorganization

Without the Channeling Injunction and Releases, there is little likelihood that Met-Coil will reorganize. The assets contributed by Mestek and the Settling Insurers form the foundation of Met-Coil's Plan, and without those contributions, creditors would receive far less with most creditors receiving no value. Thus, any material recovery for creditors and future TCE claimants is dependant upon Mestek's and the Settling Insurers' substantial contributions.

Neither Mestek nor the Settling Insurers are willing to contribute the value upon which the entire Plan is to be funded without approval of the Channeling Injunction and Releases, and those provisions are a condition to confirmation. (Shea Decl. ¶ 18; Shafir Decl. ¶ 3.) Under these circumstances, the Channeling Injunction and Releases are essential to the reorganization because they form the lynchpin to its potential success. Master Mortgage, 168 B.R. at 938

; see, e.g., In re American Family Enterprises, 256 B.R. 377 (D.N.J. 2000) ("[w]ithout the Channeling Injunction" creditors would face a "serious risk" of no recovery).

D. The Creditors Have Voted Overwhelmingly To Accept The Proposed Plan

Perhaps the most compelling factor favoring approval of the Plan is its overwhelming acceptance by creditors. Master Mortgage, 168 B.R. at 938. Over 99% of all

eligible class members voted in favor of the Plan, and therefore similarly accepted the Channeling Injunction and Release. (See Feil Decl., Exh. 3.) Moreover, 100% of the members of Class 6—the class affected by the Channeling Injunction—voted to accept the Plan. (Id.) Thus, the classes most affected by the Channeling Injunction have overwhelmingly accepted the proposed Plan. By contrast, less than 1% of the class members eligible to vote have rejected the Plan.[6] Under these circumstances, the fourth Master Mortgage factor is satisfied. Zenith Electronics, 241 B.R. at 111; Master Mortgage, 168 B.R. at 938.

E. The Plan Provides For Payment Of Substantially All Of The Claims Of The Classes Affected By The Channeling Injunction And Releases

The Plan also satisfies the fifth Master Mortgage factor, in that it provides a mechanism to pay for substantially all of the classes affected by the Channeling Injunction and Releases. The Plan provides a mechanism in the TCE PI Trust to pay both current and future TCE personal injury claims of Class 6 for the next 45 years. After an exacting analysis and study, the Court-appointed Futures Representative, Professor Eric Green, concluded that the amounts earmarked to fund the TCE PI Trust are adequate to satisfy all anticipated TCE PI Claims over a 45-year period. (Green Aff. ¶¶ 47, 58.)

The Plan further provides for substantial cash payments to remaining creditors. In particular, the Plan provides for payment of no less than 70% of any creditor claim, unless otherwise agreed. Over 98% of the value of the relevant class has voted in favor of these terms. These circumstances also compel approval of the Channeling Injunction and Release.

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[6] Indeed, there are no material objections to the Plan. One objection that was received was resolved, and the two remaining objections were reservations filed by Settling Insurers in which they confirm that their support for the Plan is contingent on approval of their respective settlements and confirmation of the Plan, with the TCE Channeling Injunction.

CONCLUSION

For the foregoing reasons, and as established in the Memorandum of Law In Support of the Confirmation of the Fourth Amended Chapter 11 Plan of Reorganization Dated June 22, 2004, and accompanying affidavits and declarations, the Court should enter an Order confirming the Plan in all respects.

Dated: July 26, 2004

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