

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
Met-Coil Systems Corporation,)	Case No. 03-12676 ()
)	
Debtor.)	

**DEBTOR'S MOTION FOR ENTRY OF ORDER PURSUANT TO 11 U.S.C. §§ 105(A)
AND 363(B) AUTHORIZING DEBTOR TO HONOR CUSTOMER DEPOSITS
AND OTHER PREPETITION OBLIGATIONS TO CUSTOMERS
AND CONTINUE WARRANTY AND OTHER CUSTOMER
PROGRAMS ON A POSTPETITION BASIS**

Met-Coil Systems Corporation (the "**Debtor**" or "**Met-Coil**"), debtor and debtor in possession in the above-captioned Chapter 11 case (the "**Case**"), hereby presents this motion (the "**Motion**") for entry of an Order pursuant to §§ 105(a) and 363(b) of the Bankruptcy Code authorizing the Debtor to honor customer deposits and other prepetition obligations to customers and continue warranty and other customer programs on a postpetition basis. In support of the Motion, the Debtor refers to and relies upon the Affidavit of Charles F. Kuoni III in Support of First Day Motions of Met-Coil Systems Corporation (the "**Kuoni Affidavit**"), filed contemporaneously herewith and incorporated herein by reference, and respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are §§ 105(a) and 363(b) of title 11 of the United States Code (the "**Bankruptcy Code**").

INTRODUCTION

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

5. The Debtor is operating its business as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed.

RELIEF REQUESTED

6. Because certain of the Debtor's products are custom-designed and manufactured to meet unique customer specifications, in certain instances the Debtor requires customers to make deposits with it before it will start to manufacture the products. The Debtor then uses these deposits to fund the production costs as well as the Debtor's operating expenses generally. If the Debtor's customers do not receive full value for these deposits, the customers are likely to either cancel their order, and/or stop doing business with the Debtor altogether. Because certain of the Debtor's products are custom-made, if a customer cancels an order, Met-Coil most likely would not be able to resell the product to another customer. In addition, as previously stated, maintaining these relationships with the Debtor's customers is critical for the Debtor to preserve its going concern value to the greatest extent possible. Any loss of customers will jeopardize the Debtor's ability to maintain operations and reorganize successfully. As of the Petition Date, the Debtor has on its books and records approximately \$2,103,408.88 on account of these deposits (the "Customer Deposits").

7. In addition, in the ordinary course of its business, the Debtor maintains certain policies for the benefit of its customers. The programs and policies that the Debtor maintains include customer return and warranty programs (collectively, the "**Customer Programs**") and are often customized to meet the needs of individual customers.

8. Through these warranty programs, the Debtor reimburses its customers for their efforts and expenditures in handling warranty claims. As of the Petition Date, the Debtor has reserved on its books and records approximately \$750,000.00 on account of estimated obligations under the warranty programs for the following year.

9. Met-Coil's Customer Programs also includes a gold and silver service plan for certain Lockformer customers (those purchasing a plasma cutting machine). These service plans provide customers with, among other things, certain phone support and service call, parts and other savings.

10. In the Debtor's business judgment, the uninterrupted maintenance of its Customer Programs is essential to attracting new customers and maintaining existing customer satisfaction. The markets for certain of the Debtor's products are highly competitive, and the Customer Programs are integral to the Debtor's ability to induce customers to purchase the Debtor's products. Discontinuation of the Customer Programs would thus disrupt business operations and undermine the Debtor's relationships with its customers. Moreover, as of the Petition Date, certain of the Debtor's customers owe money to the Debtor for goods purchased. Accordingly, if the Debtor does not receive authority to continue to honor Customer Programs as requested herein, customers that owe money to the Debtor likely could and would assert the right to setoff payments owed to them by the Debtor against the respective amounts they owe to the Debtor.

11. The Debtor believes that honoring the Customer Deposits and maintaining the existing Customer Programs is critical to its continued operations. In the competitive markets in which the Debtor's products are sold, even a short delay by the Debtor in honoring the Customer Deposits or continuing the Customer Programs could cause serious and irreparable harm to the value of the Debtor's estate.

12. The Debtor submits that the total amount to be paid or credited to customers if the Court grants the requested relief is minimal compared with the losses that the Debtor could suffer if the patronage of its customers erodes at the outset of this case. In sum, maintenance of the Customer Deposits and the Customer Programs is essential to the continued vitality of the Debtor's business and, ultimately, to its prospects for a successful reorganization. The Debtor thus submits that permitting it to honor the Customer Deposits and continue the Customer Programs is in the best interests of its estate, its creditors, and all other parties in interest.

LEGAL BASIS FOR RELIEF REQUESTED

13. By this Motion, the Debtor seeks authority to (a) pay or honor amounts related to the Customer Deposits and the Customer Programs in the ordinary course of business and (b) to continue the Customer Programs postpetition. The Debtor believes that the majority of the amounts to be paid with regard to the Customer Programs discussed herein will arise postpetition and, therefore, will be entitled to administrative expense priority under § 503 of the Bankruptcy Code. Nevertheless, because certain of the Customer Programs may give rise to postpetition payment obligations from prepetition practices, the Debtor is also seeking authority to make such payments or honor such programs in the

ordinary course of its business. The Debtor estimates the dollar amount of the Customer Deposits at approximately \$2,103,408.88.

14. The Debtor also requests that all applicable banks and other financial institutions be authorized to receive, process, honor and pay any and all checks or other means of payment drawn on the Debtor's accounts on account of Customer Programs, whether such checks or other means of payment were presented before or after the Petition Date.

AUTHORITY

15. Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). "Under Section 105, a court can permit pre-plan payment of prepetition obligations when essential to the continued operation of the debtor." In re NVR L.P., 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing Ionosphere Clubs, 98 B.R. at 177).

16. Courts in this district have recognized that in certain instances prepetition amounts must be paid to critical parties in order to maintain and enhance the overall value of the debtor's operations and business. See, e.g., In re Pathmark Stores, et al., Case No. 00-02963 (JJF) (D. Del. July 13, 2000); In re ICG Communications, Inc., Case No. 00-4238 (PJW) (Bankr. D. Del. Nov. 14, 2000); In re Philip Services, Case No. 99-02385 (MFW) (Bankr. D. Del. June 29, 1999); In re Hechinger Investment Co. of Delaware, Inc., et al.,

Case No. 99-02201 (PJW) (Bankr. D. Del. June 11, 1999); In re Venture Stores, Inc., Case No. 98-101 (RRM) (Bankr. D. Del. Jan. 20, 1998).

17. The "necessity of payment" doctrine further supports the relief requested herein. This doctrine "recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor." Ionosphere Clubs, 98 B.R. at 176; see also In re Chateaugay Corp., 80 B.R. 279 (S.D.N.Y. 1987). This doctrine is consistent with the paramount goal of Chapter 11: "facilitating the continued operation and rehabilitation of the debtor" Ionosphere Clubs, 98 B.R. at 176.

18. Courts in this district have recognized the necessity of payment rule in the context of honoring customer obligations which will enhance the value of the debtor's operations and business. See, e.g., In re Diamond Brands Operating Corp., Case No. 01-1825 (RJN) (Bankr. D. Del. May 30, 2001) (granting relief where debtors' customer practice obligations totaled approximately \$9.4 million); In re Hechinger Investment Co., No. 99-2261 (granting relief where debtors' customer practice obligations totaled approximately \$33 million).

19. The Debtor submits that the foregoing demonstrates the substantial benefits that will inure to its estate, its creditors and other parties-in-interest as a result of the Debtor honoring the Customers Deposits and maintaining and continuing the Customer Programs postpetition and honoring prepetition obligations on account of the Customer Programs. Therefore, the Debtor submits that entry of an order authorizing them to honor the Customers Deposits and Customer Programs is necessary and appropriate to maintain the Debtor's going concern value.

NOTICE AND PRIOR APPLICATION

20. Notice of this Motion 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) the Debtor's twenty (20) largest unsecured creditors; (d) the United States Environmental Protection Agency; (e) the Attorney General of the State of Illinois; (f) the DuPage County State's Attorney; and (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"). As this Motion is seeking "first day" relief, notice of this Motion and any order entered respecting this Motion will be served as required by Del. Bankr. LR 9013-2(d). The Debtor submits that under the circumstances no other or further notice need be given.

21. No previous motion for the relief sought herein has been made to this or any other court.

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CONCLUSION

WHEREFORE, the Debtor respectfully requests that the Court enter an order (i) authorizing the Debtor to honor the Customers Deposits and continue the Customer Programs on a postpetition basis and honor prepetition obligations on account of such Customer Programs, and (ii) granting such other and further relief as is just and proper.

Dated: August 26, 2003

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