

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

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In re:)	Chapter 11
MET-COIL SYSTEMS CORPORATION,)	Case No. 03-12676 (MFW)
Debtor.)	Objection Deadline: Oct. 15 - 4:00 p.m. (ET)
)	Hearing Date: Oct. 20 - 3:00 p.m. (ET)

**MOTION FOR ENTRY OF AN ORDER
APPROVING FORM OF ACCESS AGREEMENT
AND AUTHORIZING THE DEBTOR TO ENTER
INTO AGREEMENTS TO ALLOW ACCESS ONTO
PREMISES FOR ENVIRONMENTAL INVESTIGATION**

Met-Coil Systems Corporation ("**Met-Coil**" or "**Debtor**"), as debtor and debtor in possession, by and through its undersigned counsel, hereby moves this Court (the "**Motion**") for entry of an order pursuant to 11 U.S.C. §§ 105(a), 363 and 364(b) approving the form of access agreement and authorizing the Debtor to enter into agreements with certain property owners to allow the Debtor access to certain premises to conduct environmental investigations. In support of the Motion, Met-Coil respectfully states 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 Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).
2. The statutory predicates for the relief requested herein are §§ 105(a), 363 and 364(b) of 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 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 has been involved in several lawsuits over the alleged release of trichloroethylene ("**TCE**") into the soil at its facility in Lisle, Illinois (the "**Lisle Facility**"). The Lisle Facility is operated by one of the Debtor's operating divisions, the Lockformer Company ("**Lockformer**").

6. A component of the Lockformer metal fabrication facility in Lisle, Illinois was a metal "degreaser" which used TCE, a chlorinated solvent, in its operation. The TCE was stored in a rooftop tank. Honeywell International, Inc. and its predecessors, AlliedSignal, Inc. and Baron Blakeslee, Inc., owned and maintained the storage tank and supplied TCE to Met-Coil.

7. In the 1970's and early 1980's, TCE was allegedly spilled when AlliedSignal's employees transferred the solvent from delivery tanker trucks to the rooftop storage tank. In or about 1991, during the course of repairs to underground utilities, Met-Coil discovered a concentration of TCE deposited in the soil near the fill pipe for the TCE storage tank. Met-Coil thereafter retained an environmental consulting firm to investigate the TCE contamination and to recommend appropriate remediation.

¹ A detailed description of the Debtor's business operations and the events leading to the filing of this chapter 11 case 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].

8. On December 5, 1994, pursuant to a voluntary environmental investigation and remediation program of the Illinois Environmental Protection Agency (the "**IEPA**"), Met-Coil submitted a Review and Evaluation Services Agreement to the IEPA. On August 26, 1998, Met-Coil submitted a Site Remediation Program Form to the IEPA.

9. On January 19, 2001, the Illinois Attorney General and the DuPage County State's Attorney filed a Verified Complaint for Injunction and Civil Penalties against Lockformer and Met-Coil in the Circuit Court for the Eighteenth Judicial District, DuPage County, Illinois (the "**State Case**"), seeking injunctive relief and civil penalties. The Village of Lisle intervened in the State Case pursuant to a court order dated August 31, 2001.

10. In accordance with that certain January 22, 2001 Agreed Order between Met-Coil and the Illinois Attorney General (the "January 22, 2001 Order"), Met-Coil is required to conduct additional environmental investigations on certain properties adjacent to the Lockformer facility. The Debtor needs to gain access to these properties to conduct these investigations.

11. In order to obtain access to these properties, Met-Coil has prepared a form of access agreement (the "**Access Agreement**") that it intends to present to any owners (the "**Property Owners**") of property to which it will need to access in order to conduct environmental investigations. The Access Agreement sets forth the terms pursuant to which Met-Coil will be granted access to the various properties. A copy of the Access Agreement is attached hereto and incorporated herein as Exhibit A. In exchange for permission to enter the properties and conduct an investigation, Met-Coil will agree to indemnify the Property Owners against, "any loss, costs, damages or expenses incurred by [Property] Owners for injury to person or property that are directly related to Met-Coil's negligence, gross

negligence or intentional misconduct during the performance of the Environmental Investigation." See Exhibit A at Section 11. In addition, Met-Coil will agree to restore, as nearly as practicable, each property to its original condition as found immediately preceding the beginning of the environmental testing.

RELIEF REQUESTED

12. By this Motion, Met-Coil seeks entry of an order: (a) approving the form of Access Agreement; (b) authorizing it to enter into the Access Agreements with the Property Owners; and (c) authorizing it to indemnify the Property Owners as provided in the Access Agreement.

BASIS FOR RELIEF

13. To carry out the January 22, 2001 Order, the Debtor needs to obtain access to certain adjacent and nearby properties to conduct environmental investigations, which will require Met-Coil to bore a hole approximately 30 feet deep or until they hit the water table. Met-Coil will then take samples of the groundwater encountered. Understandably, the Property Owners may be unwilling to allow access to their properties to conduct the testing unless the Debtor agrees to certain protections, including an indemnification from, " any loss, costs, damages or expenses incurred by [Property] Owners for injury to person or property that are directly related to Met-Coil's negligence, gross negligence or intentional misconduct..." Exhibit A at Section 11. Accordingly, in order to provide such protections and define the terms under which this environmental testing will be conducted, the Debtor proposes that it be authorized to offer to enter into the Access Agreement with the Property Owners.

14. By entering into the Access Agreements, Met-Coil may be incurring an obligation outside the ordinary course of its business to indemnify the Property Owners. Any obligation of the Debtor to indemnify the Property Owners under the Access Agreements would likely give rise to an administrative expense under § 503(b)(1) of the Bankruptcy Code. Section 364(b) provides, in pertinent part, "The court, after a notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt allowable under section 503(b)(1) of this title as an administrative expense." 11 U.S.C. § 364(b). Furthermore, under § 105(a) of the Bankruptcy Code, the Court, "may issue any order, process or judgment that is necessary to carry put the provisions of this title." 11 U.S.C. § 105(a). By this Motion, the Debtor seeks this Court's authorization to allow it to incur an unsecured obligation to indemnify the Property Owners under the terms of the Access Agreements. The Debtor believes that authorizing it to grant the indemnity provided in the Access Agreements is a sound exercise of its business judgment and is in the best interests of the Debtor's estate and its creditors.

15. The Debtor has a sound business justification for entering into the Access Agreements. Since it discovered the TCE concentration at the Lisle Facility, Met-Coil has endeavored to cooperate with the federal, state and local agencies. The Debtor believes it is in its best interests as well as the best interests of its estate and creditors to continue to cooperate with these governmental agencies. In order to comply with the January 22, 2001 Order, Met-Coil is required to conduct environmental testing at several properties adjacent to the Lisle Facility. To gain access to these properties, the Debtor plans to offer to enter into the Access Agreements in substantially the same form with each

Property Owner. Accordingly, the Debtor believes, in its business judgment, that entry into the Access Agreements is in the best interests of its estate.

16. Furthermore, it is in the best interests of the Debtor and its estate to authorize it to grant the indemnity provided in the Access Agreement. The indemnity is narrowly tailored to limit the Debtor's liability to those instances where its negligence, gross negligence or intentional misconduct is directly related to the claim or suit being levied against the Property Owner. Specifically, the indemnity provision contained in Section 11 of the Access Agreement provides:

INDEMNITY. Met-Coil agrees to indemnify and hold harmless Owners from any loss, costs, damages or expenses incurred by Owners for injury to person or property that are directly related to Met-Coil's negligence, gross negligence or intentional misconduct during the performance of the Environmental Investigation, except for the negligence, gross negligence, or intentional misconduct of Owners or Owners' tenants, occupants, invitees, employees, agents, contractors or representatives. In no event shall Met-Coil be liable to Owners for any consequential or incidental damages arising from the Environmental Investigation, and this indemnity is expressly limited to loss, costs, damages or expenses incurred that are directly related Met-Coil's performance of the Environmental Investigation and exercise of its rights under this Agreement. Met-Coil's limited indemnity of Owners terminates at the conclusion of the Environmental Investigation. Upon discovery of any claim for any loss, cost, damage or expense by Owners, any and all such claims shall be raised within thirty (30) days of discovery of same and must be filed with the United States Bankruptcy Court, District of Delaware in the matter of In re: Met-Coil Systems Corporation, Case No. 03-12676.

Without the indemnity, the Property Owners would likely not agree to the Access Agreement, and the Debtor would not be able to obtain access to these properties. Because the indemnity is narrowly tailored, however, the risk to the Debtor and its estate is significantly reduced. As discussed above, it is critical that the Debtor be able to obtain access to these properties so that it can conduct the environmental testing required by the

January 22, 2001 Order. Accordingly, the indemnity the Debtor will grant under the Access Agreements is reasonable under the circumstances and in the best interests of the Debtor's estate and its creditors.

NOTICE

17. 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) 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.

NO PRIOR REQUEST


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

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

(a) approving the form of Access Agreement; (b) authorizing the Debtor to enter into an Access Agreement, in substantially the same form, with the Property Owners; (c) authorizing the Debtor to indemnify the Property Owners as provided in the Access Agreement; and (d) granting such further relief as the Court deems proper.

Dated: October 8, 2003

MORRIS, NICHOLS, ARSHT & TUNNELL

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