

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
)  
) Case No. 03-12676 (MFW)  
MET-COIL SYSTEMS CORPORATION, )  
)  
) **Hearing Date: November 18, 2003 at 12:30 p.m.**  
Debtor. ) **Objections Due by: October 30, 2003 at 4:00 p.m.**

**APPLICATION FOR ORDER AUTHORIZING LEGAL REPRESENTATIVE FOR  
FUTURE CLAIMANTS TO RETAIN AND EMPLOY  
ANALYSIS, RESEARCH & PLANNING CORPORATION AS CONSULTANT**

Eric D. Green (the "Future Claimants' Representative"), as the proposed legal representative for Future Claimants (defined below) in the above-captioned case, for his application (the "Application") for an order pursuant to sections 105(a), 327, and 1103 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code") and Rule 2014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), authorizing the Future Claimants' Representative to retain and employ Analysis, Research & Planning Corporation ("ARPC") as his consultant to assist in analyzing and quantifying the Debtor's trichloroethylene-related liability effective as of October 1, 2003, respectfully represents:

**INTRODUCTION**

1. On August 26, 2003 (the "Petition Date"), the debtor in the above captioned case (the "Debtor" or "Met-Coil") commenced this case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

2. Since filing their petitions for relief, the Debtor has continued to manage and operate its business as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. On September 11, 2003, the Official Committee of Unsecured Creditors (the "Committee") was appointed in this case by the United States Trustee.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This 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), 327, and 1103 of the Bankruptcy Code.

### **BACKGROUND**

4. Met-Coil is a metal forming company with two separate operating divisions, Lockformer and IPI. Lockformer operates out of a manufacturing facility in Lisle, Illinois, and IPI operates out of a manufacturing facility in Cedar Rapids, Iowa. Through its two divisions, Met-Coil manufactures advanced sheet metal-forming equipment, fabricating equipment and computer controlled fabrication systems for HVAC sheet metal contractors, steel service centers and custom roll formers in the global market.

5. Upon information and belief, 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 Debtor's alleged release of TCE (“Future Claimants”), the Debtor has

sought the appointment of a representative to protect the interests of the Future Claimants (the “Future Claimants’ Representative”).

7. Presumably, a key feature of any consensual plan of reorganization in this case will be the creation of a channeling injunction. Through a channeling injunction, all current and future personal injury claims against the Debtor will be directed to a trust established for the purposes of equitably distributing available assets to the holders of such claims.

8. The Future Claimants’ Representative anticipates that the structure and provision of a plan of reorganization will be the subject of intense negotiations during the coming months. During these negotiations, the rights of current claimants can be well represented and indeed protected by the claimants themselves. The appointment of a Future Claimants’ Representative is necessary to represent and protect the rights of Future Claimants.

9. On September 23, 2003, the Debtor filed its Application for the Appointment of Eric Green as Legal Representative for Future Claimants, (the “Appointment Application”). In the Appointment Application, the Debtor requested that the Future Claimants’ Representative be granted permission to employ attorneys or other professionals consistent with sections 105, 327 and 1103 of the Bankruptcy Code. On September 23, 2003, Mr. Green filed an Application to Employ Young Conaway Stargatt & Taylor, LLP, as his counsel.

10. In addition to the retention of ARPC, the proposed Futures Representative anticipates seeking to retain experts in the disciplines of hydrogeology and epidemiology to further assist him in analyzing and quantifying the Debtor’s liability to Future Claimants.

### **RELIEF REQUESTED**

11. By this Application, I respectfully request the entry of an order pursuant to Sections 105 and 1103 and, to the extent applicable, section 327 of the Bankruptcy Code

authorizing the Future Claimants' Representative to retain and employ ARPC as consultant effective as of October 1, 2003.

**BASIS FOR THE RELIEF REQUESTED**

12. Section 327(a) of the Bankruptcy Code provides, in relevant part, as follows:

Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

11 U.S.C. § 327(a).

13. Section 1103(a) of the bankruptcy Code provides, in relevant part, as follows:

At a scheduled meeting of a committee appointed under section 1102 of this title, at which a majority of the members of such committee are present, and with the court's approval, such committee may select and authorize the employment by such committee of one or more attorneys, accountants, or other agents, to represent or perform services for such committee.

11 U.S.C. § 1103(a).

14. Bankruptcy Rule 2014(a) provides, in relevant part, as follows:

An order approving the employment of attorneys . . . pursuant to § 327, § 1103, or § 1114 of the Code shall be made only on application of the trustee or committee. The application shall be filed and . . . a copy of the application shall be transmitted by the applicant to the United States trustee. The application shall state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee. The application shall be accompanied by a

verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, or any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

15. In other chapter 11 cases, legal representatives for future claimants have been authorized to retain counsel and other professionals to assist them in performing their duties in the bankruptcy proceedings. See, e.g., In re Johns-Manville Corporation, Ch. 11 Case No. 82-B-11656 (BRL) (Bankr. S.D.N.Y. August 14, 1984); In re Keene Corporation, Ch. 11 Case No. 93-B-46090 (SMB) (Bankr. S.D.N.Y. 1994); In re The Babcock & Wilcox Company, Ch. 11 Case No. 00-1092 (Bankr. E.D. La. 2000); In re Pittsburgh Corning Corporation, Ch. 11 Case No. 00-22876 (JKF) (Bankr. W.D. Pa. 2000); In re North American Refractories Company, Ch. 11 Case No. 02-20198 (JKF) (Bankr. W.D. Pa. 2002); In re Federal-Mogul Global Inc., Ch. 11 Case No. 01-10578 (Bankr. D. Del. 2001); In re USG Corporation (Ch. 11 Case No. 01-2094 (RJN) (Bankr. D. Del 2001); In re AC and S, Inc., Ch. 11 Case No. 02-12687 (RJN) (Bankr. D. Del. 2002); In re Kaiser Aluminum Corporation, Ch. 11 Case No. 02-10429 (JKF) (Bankr. D. Del. 2002).<sup>1</sup>

16. The Future Claimants' Representative seeks to retain ARPC to provide consulting services to aid in analyzing the estimated volume, value, and timing of the claims of the unknown TCE claimants and the issues related to trust management and to the processing of such claims. ARPC may also be required to provide testimony and other litigation support as may be necessary. The services to be provided by ARPC are essential to allow the Future

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<sup>1</sup> Eric Green, the proposed Future Claimants' Representative in the instant case, is the legal representative for the future asbestos bodily injury claimants in the Babcock & Wilcox and Federal-Mogul cases. ARPC has been retained as asbestos consultant by Mr. Green in his role as the Future Claimants' Representative in each of those cases.

Claimants' Representative to effectively quantify the contingent liabilities of the unknown TCE claimants.

17. ARPC is well-suited to act as my consultant. Over the past twenty years, ARPC professionals have been engaged in many of the largest personal injury and property damages cases in U.S. history. During this period, ARPC has been retained in litigation arising from asbestos, breast implants, Albuterol asthma medication, Dalkon Shield, IUD, the Love Canal waste site, the Three Mile Island nuclear incident, and numerous superfund sites. Among the services performed during the course of these various retentions, ARPC professionals have assisted in the development of reorganization plans and have been retained as expert witnesses for the quantification of liability in bankruptcy cases. Based on its significant experience in this field, and its familiarity with the Debtor's mass tort-related liability issues, ARPC's retention as consultants to the Future Claimants' Representative is in the best interest of the Debtor's estate and its creditors and is also in the best interest of the unknown TCE claimants.

18. Subject to court approval, and in accordance with Section 330(a) of the Code, compensation will be paid to ARPC on an hourly basis, plus reimbursement of actual, necessary expenses incurred by ARPC. ARPC professionals charge by the hour with the rates depending on the experience and training of the individuals working on the task. The hourly rates for ARPC Professionals are \$350-450 for Principals, \$250-350 for Senior Consultants, \$180-250 for Consultants, and \$125-200 for Analysts. Expenses for travel and consumables are billed at cost to the client. Charges are not accumulated or billed to the client for non-professional or clerical staff.

19. ARPC understands that its fees and expenses in these chapter 11 proceedings will be subject to the requirements of sections 330 and 331 of the Bankruptcy Code,

the Bankruptcy Rules and any order entered by this Court establishing procedures for interim compensation and reimbursement of expenses of professionals.

20. To the best of my knowledge, and except as disclosed herein and in the declaration of B. Thomas Florence, president of ARPC, which is annexed hereto as Exhibit A, ARPC has not represented the Debtor, its creditors, equity security holders, or any other parties-in-interest, or its attorneys, in any matter relating to the Debtor or its estate. Upon consideration of such disclosure, ARPC represents no interest adverse to the Debtor's estate and that ARPC is a "disinterested person" as that phrase is defined in section 101(14) of the Bankruptcy Code.

#### **BEST INTERESTS OF THE ESTATES**

21. ARPC's consultants and scientists are, in the Future Claimants' Representative's view, highly skilled, and are prepared to quickly develop a familiarity with the Debtor's affairs. The Future Claimants' Representative therefore believes that the retention of ARPC is in the best interest of the Debtor, its estate and creditors as well as in the best interest of the Future Claimants.

#### **NOTICE**

22. The Future Claimants' Representative provided notice of this Application to the Office of the United States Trustee; the Debtor; the Committee; Mestek, Inc., or its designee under the Post-Petition Loan and Security Agreement, dated August 28, 2003 (the "DIP Lender"); and all parties who filed Notices of Appearance herein.

#### **NO PREVIOUS REQUEST**

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

WHEREFORE, the proposed Future Claimants' Representative requests entry of an order authorizing him to employ and retain ARPC, and granting such other and further relief as is just and proper.

Dated: October 7, 2003



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Eric D. Green, as Proposed Future Claimants'  
Representative