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: Nov. 11 - 4:00 p.m. (ET)**
	)	**Hearing Date: Nov. 18 - 3:00 p.m. (ET)**

MOTION TO ASSUME SETTLEMENT AGREEMENT OR IN THE ALTERNATIVE TO APPROVE SETTLEMENT AGREEMENT PURSUANT TO BANKRUPTCY RULE 9019

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. § 365 authorizing the Debtor to assume a settlement agreement or in the alternative approving a settlement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure. 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 § 365 of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

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. In November, 2002, Met-Coil, along with Lockformer and Mestek, Inc. ("**Mestek**") Met-Coil's indirect parent, filed their Fourth Amended Complaint (the original complaint having been filed in February 2001) in the Circuit Court of DuPage County, Illinois against, inter alia, many of their general liability insurance carriers seeking a declaration as to the parties' rights and obligations under the insurance policies relating to an alleged release of TCE at the Lisle Facility (the "**Illinois Coverage Lawsuit**"). Among the remaining active defendants in the Illinois Coverage Lawsuit are Travelers Casualty & Surety Company and The Travelers Indemnity Company of Illinois (collectively, "**Travelers**"). Also in February 2001, a different set of insurance companies filed a declaratory judgment action in Linn County, Iowa against Met-Coil and Lockformer seeking to declare the parties' rights and obligations under certain insurance policies (the "**First Iowa Coverage Lawsuit**"). Prior to the dismissal of the First Iowa Coverage Lawsuit, Travelers filed a petition to intervene in that action. Shortly thereafter, and

[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].

before Travelers' petition was decided, the First Iowa Coverage Lawsuit was dismissed. In January 2003, Travelers filed a second insurance coverage action in Iowa against Mestek, Met-Coil and each of Met-Coil's primary and excess insurer carriers, including those with whom Mestek and Met-Coil had previously settled (the "**Second Iowa Coverage Lawsuit**"). On October 14, 2003, Met-Coil removed the Illinois Coverage Lawsuit to the United States District Court for the Northern District of Illinois, and removed the Second Iowa Coverage Lawsuit to the United States District Court for the Northern District of Iowa, pursuant to 28 U.S.C. §§ 1452 and 1334.

7. Travelers alleges that, after many months of negotiations in the spring and summer of 2003, on July 16, 2003, it entered into a binding settlement agreement with Mestek and Met-Coil (the "**Settlement Agreement**"), which agreement would resolve the disputes between Travelers on the one hand, and Met-Coil and Mestek on the other. On August 25, 2003, Travelers filed under seal a Motion to Enforce Settlement Agreement with the Circuit Court of Dupage County (see Sealed Exhibit A)[2], and filed a nearly identical motion in the Second Iowa Coverage Lawsuit.

8. Met-Coil has no reason to dispute Travelers' contention that the Settlement Agreement is a valid, binding, and enforceable agreement between the parties. Furthermore, if the settlement agreement is carried out according to its terms, there will be no reason to provide Travelers the protection under a plan of reorganization that might otherwise be available to it. Travelers has indicated a preference for the Settlement Agreement rather than the protection of a plan of reorganization, and the Debtor is prepared to accommodate Travelers'

[2] Met-Coil is filing a Motion for Leave to File Under Seal its Exhibit A to this Motion, which Exhibit will contain a copy of Travelers' sealed Motion and the confidential Settlement Agreement.

preference. Clearly, Travelers cannot have both the Settlement Agreement and the protection of a plan.

RELIEF REQUESTED

9. By this Motion, Met-Coil seeks entry of an order pursuant to § 365 of the Bankruptcy Code authorizing it to assume the Settlement Agreement, or, in the alternative, for entry of an order pursuant to Bankruptcy Rule 9019 authorizing it to enter into the Settlement Agreement.

10. Section 365 of the Bankruptcy Code provides, in relevant part:

> (a) Except as provided in section 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

11 U.S.C. § 365(a).

11. In order to assume and assign an executory contract or unexpired lease under § 365 of the Bankruptcy Code, the debtor must establish that the decision is one made in its sound business judgment. In re ANC Rental Corp., Inc., 278 B.R. 714, 723 (Bankr. D. Del. 2002) (citing In re Montgomery Ward Holding Corp., 242 B.R. 147, 153 (D. Del. 1999)). The business judgment standard is satisfied when a debtor demonstrates that assumption will benefit the estate or its reorganization effort. See In re Bullet Jet Charter, Inc., 177 B.R. 593, 601 (Bankr. N.D. Ill. 1995).

12. Assuming the Settlement Agreement is in the best interests of the Debtor's estate and its reorganization effort. By assuming the Settlement Agreement, the Debtor will be able to bring a significant amount of money into its estate (as set forth in detail in the Settlement Agreement filed under seal). In consideration for receipt of the payment under the Settlement Agreement, the Debtor's general liability insurance policies with Travelers will be extinguished,

and the Debtor and Mestek will be required to release all of their claims against Travelers arising under, or related to, the insurance policies with Travelers, and further will be required to release all environmental contamination claims against Gulf Insurance Company, an affiliate of Travelers. Since the Debtor will be able to bring a significant amount of money into the estate by assuming the Settlement Agreement, the Debtor believes, in its business judgment, that assuming the Settlement Agreement is in the best interests of its estate and will aid its reorganization effort.

13. In the alternative, if the Court determines that the Settlement Agreement is not binding on the Debtor, the Debtor requests that the Court approve the Settlement Agreement pursuant to Bankruptcy Rule 9019. Bankruptcy Rule 9019 provides, in pertinent part, that, "on motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." In determining whether to approve a compromise, a court should consider four criteria: (1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors. In re Martin, 91 F.3d 389, 392 (3d Cir. 1996). Generally, a bankruptcy court should defer to the debtor's judgment so long as there is a legitimate business justification for entering into the settlement. Id. at 395.

14. The Court should approve the Settlement Agreement. First, as with all litigation, the outcome of the Coverage Lawsuits is not certain. Second, the Coverage Lawsuits involve several complex issues that could take many years and hundreds of thousands of dollars to resolve. Third, the Debtor's creditors will benefit from the Settlement Agreement because it will bring in a significant contribution to the estate and the Debtor will not be required to spend hundreds of thousands of dollars in litigation costs to obtain it.

NOTICE

15. 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"); (h) counsel for Travelers; and (i) all parties listed on the Core Group service list and those that have requested notice of pleadings pursuant to Bankruptcy Rule 2002.

16. Bankruptcy Rule 2002(a)(3) requires the Debtor to give 20 days' notice of a hearing on approval of a compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the Court, for cause shown, directs that notice not be sent. The Debtor submits that cause exists to limit notice of the Motion to the parties listed above. There are thousands of creditors in this case. Requiring the Debtor to give notice to each would be burdensome and would defeat the purpose of this Motion, to efficiently and economically settle this dispute. Accordingly, the Debtor believes the notice provided is appropriate under the circumstances and that no other or further notice need be given.

NO PRIOR REQUEST

17. 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 the Court enter an order: (a) limiting notice; (b) authorizing it to assume the Settlement Agreement pursuant to § 365 of the Bankruptcy Code, or in the alternative, approving the Settlement Agreement pursuant to Bankruptcy Rule 9019; and (c) granting such other and further relief as is just and proper.

Dated: October 20, 2003

MORRIS, NICHOLS, ARSHT & TUNNELL

/s/ James C. Carignan

Eric D. Schwartz (No. 3134)
James C. Carignan (No. 4230)
1201 N. Market St.
P.O. Box 1347
Wilmington, DE 19899-1347
Telephone: (302) 658-9200
Facsimile: (302) 658-3989

- and -

GOLDBERG, KOHN, BELL, BLACK,
ROSENBLOOM & MORITZ, LTD.
Ronald Barliant (Illinois ARDC# 0112984)
Alan P. Solow (Illinois ARDC# 03125199)
David E. Morrison (Illinois ARDC # 6217225)
Kathryn A. Pamenter (Illinois ARDC# 6231191)
55 East Monroe Street, Suite 3700
Chicago, Illinois 60603
Telephone: (312) 201-4000
Facsimile: (312) 332-2196

Counsel for Met-Coil Systems Corporation, Debtor and Debtor in Possession